

PAUL (B.C.)

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(History)

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THE DEVELOPMENT OF MARRIAGE IN ANCIENT INDIA

BY

BALAI CHANDRA PAUL, M.A., B.L.

School of Oriental and African Studies.

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BIBLIOGRAPHY.

ABBREVIATIONS.

ABBREVIATIONS.

Das Mutt.	J.J. Bachofen, Das Mutterrecht.
O.C.	Avebury (Lubbock), The Origin of Civilisation.
S.A.H.	J.F. McLennan, Studies in Ancient History.
A.S.	L. Morgan, Ancient Society.
P.S.	H. Spencer, The Principles of Sociology.
J.A.S.	Journal of the Anthropological Institute.
T.E.	J. Frazer, Totemism and Exogamy.
P.P.	E.S. Hartland, Primitive Paternity.
H.H.M.	E. Westermarck, The History of Human Marriage.
J.A.S.B.	Journal Asiatic Society, Bengal.
A.L.	H.S. Maine, Ancient Law.
S.L.O.T.	I. Bloch, The Sexual Life of Our Time, etc.
C.T.C.	A.K. Iyer, Cochin Tribes and Castes.
C.T.S.I.	Thurston, Castes and Tribes of Southern India.
T.C.C.P.	Russell, Tribes and Castes of the Central Provinces of India.
L.O.M.F.	A. Girard-Teulon, Les Origines du marriage, etc.
J.R.A.S.Bm	Journal of the Royal Asiatic Society of Bombay.

C.I.	Gait, Census of India.
P.I.	Risley, People of India.
T.D.A.A.	Herbert, Travels into Divers parts, etc.
N.H.E.I.	Guyon, New History of the East Indies.
T.C.N.W.P.O.	Crooke, Tribes and Castes of the North-western Provinces, etc.
Hero.	Herodotus.
Stra.	Strabo.
D.C.M.C.	Dubois, Description of the Character, Manners, etc.
A.C.I.	Thyagaraja, Aiyar, Census of India.
A.A.O.	Fraxer, Adonis Atis Osiris
O.D.M.B.	Westernmarch, Origin and Development of the Moral Ideas.
I.A.	Indian Antiquary.
M. Bh.	Mahābhārata.
P.A.A.P.	Schrader. Prehistoric Antiquities, etc.
S.L.A.P.	Meyer, Sexual Life in Ancient India.
L.P.L.	Leage, Roman Private Law.
RV.	Rigveda.
Ludwig, R.V.	Ludwig's Rigveda.
J.I.H.	Journal of Indian History.
Sat.Br.	Satapatha Brāhmaṇa.
Alt.Leb.	Zimmer, Altindisches Leben.
C.H.I.	Cultural Heritage of India.
Tai.Br.	Taittiriya Brāhmaṇa.
S.B.E.	The Sacred Books of the East.

Bom. Sans. Ser.	Bombay Sanskrit Services.
C.W.B.	Collected Works of Sir R.G.Bhandarkar.
AV.	Atharvaveda.
V.H.S.L.	Vaidya, History of Sanskrit Literature.
A.I.	Barnett, Antiquities of India.
J.R.A.S.B. (Letters).	Journal of the Royal Asiatic Society of Bengal, Letters.
P.W.H.C.	Altekar, The Position of Women, etc.
H.O.S.	Harvard Oriental Series.
V.I.	Macdonell and Keith, Vedic Index, etc.
Ind. Cul.	Indian Culture.
W.H.I.L.	Winternitz, A History of Indian Literature.
B.D.S.	Baudhayana Dharma Sūtra.
L.D.N.C.	Johnstone, Lion and Dragon, etc.
I.H.Q.	Indian Historical Quarterly.
V.D.S.	Vasishtha Dharma Sūtra.
G.D.S.	Gautama Dharma Sūtra.
A.D.S.	Āpastamba Dharma Sūtra.
A.S.B., J and P.	Asiatic Society of Bengal, Journal and Proceedings.
Ca. Hi. I.	Cambridge History of India.
AS.	Arthasāstra.
M.	Manu.
Yaj.	Yajñavalkya.
J.M.Y.	Jayaswal, Manu and Yajñavalkya.
Rām.	Rāmāyana.

J.R.A.I.	Journal of the Royal Anthropological Institute of Gr. Britain and Ireland.
V.E.I.	Vaidya, Epic India.
C.R.	Calcutta Review.
N.	Nārada.
Y.C.	Yüan Chwang, On Yüan Chwang's Travels, et
H.T.	Hiuen Tsiang, Buddhist Records, etc.
Ep. Ind.	Epigraphia Indica.
Kād.	Bāṇa, Kādambari.
B.H.	Bāṇa, Harṣacarita.
L.G.A.	Salatore, Life in Gupta Age.
Kum.	Kālidāsa, Kumārasambhava.
Sak.	Kālidāsa, Śakuntalā.
U.I.K.	Upadhyaya, India in Kālidāsa.
C.I.I.	Fleet, Corpus Inscriptionum Indicarum.
M.P.H.L.	Mulla, Principles of Hindu Law.
N.S.	New Series.
J.R.A.S.	Journal of Royal Asiatic Society.
C.W.N.	Calcutta Weekly Notes.
I.C.	Indian Cases.
B.	Bombay (Indian Law Reports).
C.	Calcutta (Indian Law Reports).
P.L.R.	Punjab Law Reports.
L.	Lahore (Indian Law Reports).

CHAPTER I.

PROMISCUITY.

In discussing the institution of marriage with its various rules and regulations we are in the first instance confronted with the problem whether there was any such institution in the dawn of the human civilisation. Obviously, literary sources are of little avail in the discussion of pre-historic time. It is, of course, true that early literature furnishes us with materials which enable us to make vague guesses as to the origins of social organisation; but we can by no means assert that our guesses based on such materials are in any case certain. Therefore we are forced to supplement our sparse sources and our consequent lack of knowledge by modern anthropological data. It will be seen in the present chapter how far the history of the institution of marriage in its earliest stage can be accounted for by the examination of some of the theories propounded by eminent anthropologists.

The view that the human race originally lived in a state of promiscuity where individual marriage was unknown, but where all the men of a horde or tribe had indiscriminate access to all the women, and the children

of such unions belonged to the community at large,¹ is shared by many eminent scholars. Herbert Spencer has, of course, slightly qualified this theory by contending that even in pre-historic times when promiscuity was the general rule, promiscuous relations, though the rule, were to some extent modified by the occasional establishment of individual relations.²

Bachofen, on the evidence of classical literature, postulates that the earliest method of reckoning descent was through the mother only and that primitive society³ was, therefore, matriarchal and patriarchal. He bases this view upon Herodotus' account of the Lycians. Herodotus says,

"They have, however, one singular custom in which they differ from every other nation in the world. They take the mother's and not the father's name. Ask a Lycian who he is, and he answers by giving his own name, that of his mother, and so on in the female line. Moreover, if a free woman marry a man who is a slave, their children

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1. McLennan, *Studies in Ancient History*, pp. 92, 95; Bachofen, *Das Mutterrecht*, pp. xix. xx. 10; Avebury, *Origin of Civilisation*, p. 68 sqq; Avebury, *Marriage Totemism and Religion*, p. 3 sqq; Morgan, *Ancient Society*, p. 418, 500 sqq; Morgan, *Systems of Consanguinity and Affinity*, pp. 480, 487, sq; Finck, *Primitive Love and Love-stories*, pp. 79n. 1, 438; Debel, *Women in the Past, Present and Future*, p. 9; Fiske, *Outlines of Cosmic Philosophy*, ii. 345; Bloch, *Sexual Life of Our Time*, pp. 188 sqq.
 2. Herbert Spencer, *Principles of Sociology*, i. p. 635.
 3. *Das Mutt.* quoted by Edwin Sidney Hartland, *Primitive Society*, p. 5.

are full citizens; but if a free man marry a foreign woman, or live with a concubine, even though he be the first person in the State, the children forfeit all the rights of citizenship"⁴.

However, this account of the Lycians and the accounts given by Herodotus⁵ and Strabo⁶ of the Massagetae who are generally supposed to have had promiscuous relations with their women are capable of another connotation. Westermarck is right when he points out that in these accounts individual marriage is expressly said to exist though it is also said that other men too had access to the wife as well as the husband.⁷ Such statements cannot be cited as evidence of early promiscuity without further discussion.

In a promiscuous age when paternity was uncertain, it is suggested that it naturally came about that the child was considered akin to his mother.⁸ This is the basis of the establishment of the so-called 'Mother-right'. It is, of course, clear that once we accept the theory of a promiscuous stage in social evolution, it is much easier to trace the origin of 'Mother-right'. In this way Bachofen has called the earliest promiscuous stage of life 'Hetairism', and the next stage of evolution

4. Herodotus. i. 173.

5. Ibid. i.216.

6. Strabo, Geographica, XI. 8.6. quoted by Westermarck, The History of Human Marriage, vol.1, p.106.

7. H.H.M., vol.I. p. 107.

8. Bossu, Travels through Louisiana, i. p. 232.

'Mother-right'. He then goes on to consider the third stage, which followed 'Mutterrecht'; he thinks that it was due to greater importance being attached to the creative influence of the father than to the material tie of mother-hood that many changes including the pre-eminence of men, property and descent being traced in the male line, sun worship superseding moon worship, and the like took place. Shortly his idea concerning these changes is that the father was the acknowledged author of being and the mother was a mere nurse.

Moreover, in his opinion there is not only a close connection between Hetairism and Mutterrecht, but the latter is the product of the former. He postulates that an uprising of women who were evidently tired of the unbridled passions of their men brought about the institution of marriage, reckoning the descent only in the mother's line, and eventually acquiring for the mother social and political supremacy.

Uninfluenced by the theories propounded by Bachofen, McLennan independently puts forward similar views. He says "It is inconceivable that anything but the want of certainty on that point (that is on the point of paternity) could have long prevented the

9. Bachofen, quoted by Avebury (Lubbock) O.G., p.99. (London, 1882)

10. Bachofen quoted in Hartland's Primitive Society, p.6

acknowledgement of kinship through males; and in such cases we shall be able to conclude that such certainty has formerly been wanting - that more or less promiscuous intercourse between the sexes has formerly prevailed. The connection between these two things - uncertain paternity and kinship through females only seems so necessary - that of cause and effect - that we may confidently infer the one where we find the other¹¹. However, he recognises the possibility of the origin of descent through females only in some cases where marriage relations indicated the certainty of the fatherhood¹². He has also cited various modern instances¹³ of adulterous connections in modern society which undoubtedly contribute towards uncertainty of male parentage. One wonders how these connections can be at all characterised as promiscuous in the strict sense of the term, that is to say, in the sense in which Bachofen postulates. Morgan also thinks that descent in the female line is the more archaic form and that father-right was preceded by mother-right^{13a}.

Hartland, on the other hand, is inclined to think that reckoning of descent through the mother cannot have resulted from the prevalence of sexual laxity,

11. S.A.H., p.88.

12. Ibid., p.88.

13. Ibid., p.96, f.n.1.

13a. A.S., p.344.

for all over the world many peoples reckon their descent through the mother even though there is no reasonable doubt of the paternity of the children. He further says "absolute promiscuity we find nowhere¹⁴ in human society". It would seem that he is probably right in this. However, he goes on to say that in communities where the father is the centre of the family, and yet at the same time women shoulder responsible burdens of family government, or where the husband resides with the wife and her family, or where the inheritance of property or succession to family office is traced through the mother, such instances must necessarily lead us to suspect a prior stage of the growth of society when the mother was its centre. The social importance of the maternal uncle even in a patrilineal society also suggests the previous existence of a matrilineal society, with the conditions of which the surviving dominant position of the maternal uncle is entirely consistent. However, he admits that any such social order centring on maternal kinship originated at so remote a stage of development of society that^{it} is entirely conjectural. The picture he paints is as follows: The first community of human beings was the food-group, that is, the group which sought its food, and probably actually fed together. In the

14. Hartland, Primitive Society, pp.11,12

first dawn of consciousness of kinship the importance of the mother in regard to the child whom she has brought forth and who remains dependent on her for a considerable time must have been sufficiently realised to make her the pivot of social organisation, and very soon this would bring about the creation of clans comprising mothers and their offspring. He goes on to say without hesitation that the origin of mother-right is not to be found in uncertainty of paternity. Mother-right in his opinion, has taken its rise in a condition of society where kinship, which is a socialological term, is not synonymous with blood-relationship. "Many savage peoples are organised in totemic clans, each clan bearing usually the name of an animal or plant often supposed to be akin to the human members of the clan. Every member of the clan recognises every other member as of the kin every member of the totem-clan, wherever he may be found, is entitled to all the privileges and subject to all the disabilities incident to his status Foremost among his

15. For the origin of totemism see P.S., Vol.1. 169-176, 180-183, pp.331-346, 354-359; Frazer, Totemism and Exogamy, vol.1, p.87; Wilken, "Het Animisme Bij De Volken Van Den Indischen Archipel", De Indische Gids, June 1884, pp 997-999; see also Tylor, 'Remarks on Totemism, J.A.I., xxviii (1899), pp.146-148; cf. T.E., vol.1V, pp. 45, 46; see also Frazer, The Golden Bough, 11, 430 sqq.

disabilities is the prohibition to marry or have sexual relations with any woman within the kin. Consequently his children must all be children of women belonging to a different kin from his own"¹⁶. However, the tie of blood-relationship is not altogether discarded. Clan kinship which is actually not equivalent to blood-relationship, nevertheless is founded on the acceptance of the idea of common-blood, possessed by all within the clan. In a society founded on the bond of blood and where descent is reckoned through females only, the father does not belong to the kin of the children.¹⁷ Exogamy, that is, marriage outside kin and clan, is compulsory among peoples who are matrilineal.

Hartland further explains his position when he says, "It may be said without fear of contradiction that while no case is known where matrilineal reckoning betrays evidence of having been preceded by paternal descent, the converse has been observed

16. Hartland, *Primitive Paternity*, vol.1.p.257.

17. Russell, *Tribes and Castes of Central Provinces* vol.1,p.87; *Ibid.* vol.2. pp.361-362; Gomme, *Folklore as an Historical Science*, p.252; for the relationship between Totemism and Exogamy see Freud, *Totem and Taboo*, p.186.

in every part of the world. Cases may exist of tribes reckoning descent through the father in which no trace remains of reckoning through the mother. The mere existence of such cases is wholly insufficient to disprove a prior stage of mother-right, or even to shift the burden of proof".¹⁸

Westermarck, however, does not agree with the view that mother-right everywhere preceded father-right. He says, "Those who advocate a primitive stage of mother-right without paternal rights and paternal duties are faced by the formidable fact that among the lowest savages, who chiefly or exclusively subsist on game and such products of nature as they can gather without cultivating the soil or breeding domestic animals, the family consisting of parents and children is a well-marked social unit, with the father as its head and protector."¹⁹ In other words, the functions of the father and husband are not confined to sex or procreation, but extend to the duty of maintaining and protecting the wife and children. It is undeniable that this fact is supported by plentiful evidence. The Evavallens of Cochin state never

18. P.F., vol.2.p.3.

19. H.H.M., vol.1.,p.46.

allow a young man to marry unless he can support
20 a wife. Again, the Nagas are not allowed to
21 marry unless they can set up a house of their own.

Henry Maine, on the other hand, postulates
that "the effect of evidence derived from
comparative jurisprudence is to establish that view
of the primeval condition of the human race which
is known as the Patriarchal Theory". He delineates
22 a primitive society organised on the patriarchal
model thus: "The eldest male parent - the eldest
ascendant - is absolutely supreme in his household.
His dominion extends to life and death, and is as
unqualified over his children and their houses as
over his slaves." He refers to the Roman Patria
Potestas in his attempt to solve the apparent
inconsistency involved in the conception of
kinship which brought strangers into the family
by adoption but at the same time excluded the
descendants of a female member, and says, "In
truth, in the primitive view, Relationship is
exactly limited by Patria Potestas. Where the
Potestas begins, kinship begins

..... Where the Potestas ends, kinship ends; so that
a son emancipated by his father loses all rights
of Agnation. And here we have the reason why the

20. Tyer, Cochin Tribes and Castes, i.44.

21. Stewart, 'Notes on Northern Cachar, J.A.S.B.
xxiv. 614.

22. Maine, Ancient Law, p.101.

descendants of females are outside the limits
of archaic kinship"²³.

Some scholars are inclined to think that certain surviving customs which are in their opinion relics from an earlier stage of civilisation when the institution of marriage was unknown, indicate an alleged previous promiscuous stage. Among primitive peoples in all parts of the world promiscuity is permitted by custom, and found side by side with marriage, and this is adduced as a positive proof that promiscuous intercourse between the sexes was in the past the established practice²⁴. Therefore it is necessary to examine carefully the evidence used in this argument.

Among some of the Indian tribes such as the
Kolyas²⁵, Tipperahs²⁶ and Oraons²⁷, unmarried girls freely co-habit with young men, but it cannot be said that they live promiscuously with them, for

23. A.L., pp. 102, 123; but see Altheim, A History of Roman Religion, p. 55 for another view.

24. S.L.O.T., p. 189 sqq.

25. Watt, 'Aboriginal Tribes of Manipur', J.A.I. xvi. 35.

26. Dalton, 'Descriptive Ethnology of Bengal', p. 203.

27. Ibid., p. 248.

a state of marriage is also acknowledged. The
Toungtha of the Chittagong Hills distinguish
between prostitution as a means of earning a
livelihood and free intercourse between two young
persons with a view to marriage.²⁸ There are also
some tribes in India and elsewhere who allow
a probationary period of co-habitation before
marriage, and this is not considered as reproachful
even if no marriage results therefrom.²⁹ But it
is doubtful how far this pre-nuptial freedom can
be characterised as promiscuous. Very frequently
these sexual connections are only a regular mode
of courtship or a preliminary to marriage, a sort
of trial before more permanent relations are
established. In some cases trial marriage is even
resorted to to make a union definite, the bridegroom
staying with the bride, or taking the girl to his
house for a certain length of time.³⁰ Though among
some Indian tribes the standard of female morality
is undoubtedly very low,³¹ a general allegation of

28. Lewin, Wild Races of South-Eastern India, p.193.

29. Gait, Census of India, 1911, vol. i. (India) Report, p.243.

30. Thurston, Castes and Tribes of Southern India, V.93. (Muduvans).

31. Crooke, Tribes and Castes of the North-Western Provinces and Oudh, i, p.clxxxiv; Gait, op.cit. p.243

promiscuity cannot be maintained. The Lisu tribes of the Burma-China frontier indulge very little in sexual intercourse before marriage and the birth of a child out of wedlock is regarded with disapproval.³² However, on the other hand, the Nagas permit full sexual freedom to both sexes prior to marriage,³³ and the Angami Naga girls consider short hair indicating virginity, a disgrace, while the men are anxious to be sure that their future wives will not be barren.³⁴ Marriage, therefore, often takes place only when the girl is enceinte. The Kukis compell³⁵ the seducer to marry as soon as the parents come to know of her pregnancy, but now the custom is not always observed.³⁶ The Ulladans, a Malayali Hindu caste of Cochin State, prohibit all pre-nuptial sexual relationships and compel a secret seducer to marry the mother of his child on the pain of being outcasted.³⁷ Similarly, the

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32. Geis, quoted by Rose and Brown, 'Lisu (Yawyin) Tribes', *Memoirs Asiatic. Soc. Bengal*, 111.263.
33. Hodson, *Naga Tribes of Manipur*, pp. 78, 87; Soppitt, *Short Account of the Kuki-Lushai Tribes*, p. 5.
34. Prain, 'Angami Nagas', *Revue Coloniale Internationale*, v. 491 sq.
35. Macrae, 'Account of the Kookies', *Asiatick Researches*, vii. 193; Butler *Travels and Adventures in the Province of Assam*, p. 84.
36. Soppitt, *op. cit.* p. 5; Shakespear, *Lushai Kuki Clans*, p. 33.
37. C.T.C.i. 30 sq.

Velans of the same state compel the lover to marry the pregnant girl and frequently they are also both fined.³⁸

Again, the Kammalans of Cochin State observe strict sexual segregation and in case of any laxity the girl and her parents are placed under a ban.³⁹ Despite the loose bonds of marriage the moral standards of unmarried Garo girls are very high.⁴⁰

All this evidence contradicts the generally accepted view that pre-nuptial chastity is commonly disregarded among primitive people, and such disregard of morality which is proved to exist cannot in any case be considered as a universal characteristic among people of the lower culture. It can be seen from ^{the} above that sexual immorality before marriage seldom occurs on the part of a girl who is not a prostitute and such immorality is looked upon with reproach and definitely punished as a crime.

On the contrary, the very ancient preference of men for virgin brides cannot be neglected. It is probable that this feeling arises partly from

38. C.T.S.I., vii. 343.

39. C.T.C., 345.

40. Playfair, Garos, p.70.

jealousy in regard to the women's past relations with other men and partly from the instinctive appreciation of feminine chastity. He prefers a virgin because he fears and despises a libertine. Want of chastity in a woman, therefore, seems unwifely and indeed unwomanly, and as such is repulsive to a man. It is this preference for the virgin wife and appreciation of female chastity that have checked pre-nuptial intercourse of a promiscuous kind and has at the same time put a gloss of morality on male opinion of marriage.⁴¹ The cause of the pre-nuptial connection has often been traced to a taste for variety. Bloch says that it is "perfectly clear that the human need for sexual variety, which is an established anthropological phenomenon, must in primitive times have been much stronger and more unbridled, in proportion as the whole of life had not hitherto arisen above the needs of purely physical requirements. Since, even in our time, in a state of the most advanced civilisation, after the development of a sexual morality penetrating and influencing our entire social life, this natural need for variety continues to manifest itself in almost undiminished strength, we can hardly regard

41. Westermarck, Origin and Development of the Moral Ideas, ii. 434 sqq.

it as necessary to prove that in primitive conditions sexual promiscuity was a more original, and, indeed, a more natural state than marriage. From the purely anthropological standpoint permanent marriage appears a thoroughly artificial institution, which even to-day fails to do justice to the human need for sexual variety⁴². Here it is contended that the taste for variety excluded any union of a relatively permanent character in the life of primitive man, but that is unsubstantiated by any evidence. On the contrary, the inclination for sexual variety might as well be satisfied by a change of wife. A wife is not only an object of sexual pleasure, but also a helpmate and a mother of the husband's children. Again, the fact that courtesans have been held in higher estimation than married women, it has been regarded as a survival of communism in women⁴³. But this tradition does not negative the institution of marriage. It is, indeed, a comment upon it. It is well-known that in India as elsewhere, the accomplishments of courtesans led many men to frequent their society⁴⁴ for they were the only

42. S.L.O.T., p.192.

43. Giraud-Toulon, Les Origines du Marriage Et De La Famille, p.43 sqq; O.C., p.107.

44. T.C.C.P., 111, 379.

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females, as in the case of the Indian Devadāsīs, who could read, sing and dance.

It has also been contended that the custom of defloration of virgin brides by a nobleman, priest, chief or king before they are married or have had any intimate connection with their husbands, is the relic of the alleged promiscuous stage or communal marriage. Such nobleman, priests, chiefs or kings are regarded as representatives of the community when the individual rights of its male members in this regard were taken away. In India it was formerly the custom among the Nayars for a Brāhman⁴⁵ to enjoy the company of the bride on the first night, but this custom has completely disappeared. That the customary defloration of brides in Cochin and Malabar was carried out by Brāhman⁴⁶ has often been recorded. There is an interesting parallel of it in Samoa. Margaret Mead says that in the case of the 'Taupo' (that is, "the village ceremonial hostess; the girl whom the high chief has honoured with a title and a (distribution of property)" "Virginity is a legal requirement for her. At her marriage, in front of

45. Dubois, A Description of the Character, Manners and Customs of the People of India, p.295.

46. S.L.C.T., p.190; O.C., p.437 sq; Das Mutt., pp.12, 13, 17, 18; L.O.M.F., p.52.

47. Herbert, Travels into Divers parts of Africa, and Asia the Great, p. 337.

48. Gayon, New History of the East Indies, i. p.431; Sonnerat, Voyage Aux Indes Orientales, i. p.68; see also Gaya, Cereémonies Nuptiales de Toutes Les Nations, p. 56 sq.

all the people, in a house brilliantly lit, the talking chief of the bridegroom will take the tokens of her virginity^{48a}". Owing to the notion of uncleanness and disgrace prevalent among the Nayers as to deflowering a woman, it was done by some young men at the request of the mother.⁴⁹ It seems probable that the mock-marriage ceremony or Tali Kettu to which every Nayar girl is still subject before she attains maturity is a relic of this pre-nuptial defloration. The essence of the rite as in all South Indian marriages, is the tying of the tali by the nominal husband round the neck of the girl, who then goes away, after receiving the usual fee and has no further conjugal rights over her. Furthermore, the fact of tying the tali constitutes an insurmountable obstruction, in some instances, to his becoming her real husband⁵⁰ in the future. But it should also be noted that among the Kammalans of Cochin State "if the tali tier of a girl wishes to keep her as wife, he has the preference to anybody else, and to none else

48a. Margaret Mead, *Coming of Age in Samoa*, p.62.

49. Barbosa, *Description of the Coasts of East Africa and Malabar in the beginning of the Sixteenth Century*. p.126.

50. Mary Billington, *Women in India*, p.80; Panikkar, *Malabar and its Folk*, p.143; for the Tali Kettu ceremony see Thurston, *Ethnographic notes in Southern India*, p.121 sqq; Risley, *People of India*, p. 209; C.T.C. 11. p.22 sqq; c.I., 1911, vol.1. (India) Report. p.242.

may she be given without his consent." Indeed, "in some parts the bridegroom is considered to have some sort of claim to the girl and may afterwards enter into sambandham (that is, actual marriage) with her".

It has been said that this rite resembles in certain respects the ritual concerning the consecration of a deva-dāsī. It is apparent that behind the bridegroom's reluctance to deflower virgin wife is some kind of traditional superstitious fear and it is probable that it is closely connected with the fear of hymeneal blood. Vedic literature describes the blood of the bridal night as poisonous and also dangerous. But again there is sometimes a religious gloss put on the act of defloration; it has been observed that the Nayars suppose "the ground of better value by that holy seed, as they call it", and instances are not rare where a Brāhman in Malabar is rewarded by

51. C.T.C., i. p.346.

52. C.I., 1911, vol.1. (India) Report, p.242.

53. Aiyar, Census of India, 1911, vol. xxi (Mysore) Report, p.99; P.I., p.209; C.I., 1911, vol.1. (India) Report, p.242; Thurston, Ethnographic Notes, p.121.

54. Crawley, Mystic Rose, p. 348. sq.

55. Weber, 'Vedische Hochzeitsprüche', Indische Studien v. pp. 189, 190, 211 sqq.

56. T.D.A.A., p.337.

the husband for the defloration because of the idea⁵⁷ that a marriage begun by a Brāhmaṇa cannot be unhappy. Again, the ideas as to the superiority of a chief or a priest seems at least in some cases to have originated in the right of defloration and is⁵⁸ countenanced in many instances. But the most conspicuous⁵⁹ cases of defloration by the priestly caste consist of rank exploitation of the superstitious belief of more simple-minded people. As an instance of the cases where the right of defloration of a bride or unmarried girl is bestowed not on a chief or priest but on several men we can quote Herodotus who states "when a Nasamonian first marries, it is the custom for the bride on the first night to lie with all the guests in turn, and each, when he has intercourse with her, gives her some present which he has brought⁶⁰ from home." Though this last instance closely resembles other instances that have already been discussed, its main difference lies in the fact that the wedding guests have to pay for the exercise of the right which factor is absent in the case of a

57. N.H.E.I., i. p.431

58. T.C.N.W.P.O., i. p. cl XXXV; Marco Polo, Kingdoms and Marvels of the East, ii. 268; Dalton, Descriptive Ethnology of Bengal, p.45.

59. Nelson, View of the Hindu Law, p.141; Reclus Primitive Folk, p.172.

60. Herodotus, IV.172.

chief or priest when they remove the danger to which the bridegroom is supposed to be subject to. Therefore the bride's connections with the wedding guests can hardly be recognised as a relic of communal marriage unless the payment for the exercise of the right can be properly accounted for. ⁶¹

Again, religious prostitution has sometimes been regarded as expiation for individual marriage. ⁶² It is necessary to discuss two different types of such prostitution namely, where a woman or a girl gives herself up to a stranger at the shrine of the mother-goddess and where a woman is attached more or less permanently to the temple of a male god as his consort, offering herself to his worshippers. Herodotus tells us that in Babylon every woman was obliged to sit once in her life-time in the precinct of Mylitta and follow the first man who threw a silver coin in her lap; and ^{that} once she had satisfied the goddess she might not be induced by any gift, and that this money was dedicated to the goddess. ⁶³ Strabo borrowing from Herodotus mentions

61. H.H.M., vol.1.p.199.

62. O.C., p.437.

63. Hero., 1.199.

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the same custom. Frazer falls back on Avebury's theory that religious prostitution is the expiation for the breach of ancient communal rights and a survival of communal marriage. He says that if the conception of a Mother-Goddess "dates, as seems probable, from a time when the institution of marriage was either unknown or at most barely tolerated as an immoral infringement of old communal rights, we can understand both why the goddess herself was regularly supposed to be at once unmarried and unchaste, and why her worshippers were obliged to imitate her more or less completely in these respects.....

Formerly, perhaps, every woman was obliged to submit at least once in her life to the exercise of those marital rights which at a still earlier period had theoretically belonged in permanence to all the males of the tribe". It has, however, been rightly pointed out by Hartland and Farnell that if prostitution had been an expiation for

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64. Stra., xvi. 120. 65. Frazer, *Adonis Attis* as quoted in H.H.M., vol. I, p. 207. *Osiris*, l. 39 sq.
66. Hartland, *Ritual and Belief*, p. 269 sq; *Idem.*, 'Concerning the Rite at the Temple of Mylitta', *Anthropological Essays presented to E.B. Tylor*, p. 191 sq.
67. Farnell, *Greece and Babylon*, p. 278; *Idem.*, 'Sociological hypotheses concerning the position of women in Ancient Religion', *Archiv f. Religionswissenschaft*, vii. 81.

for the infringement of communal rights, the women would have given themselves up to the representatives of the community and not to individuals who had no marital rights at all even under the old condition. Following ancient custom dancing-girls were attached to many temples in India. With reference to the deva-dāsīs attached to the temples of Southern India, it has been said that they combined a profligate life with their religious duties as servants of the god and that they were recruited from any caste. Very often they were of respectable birth and were bred in this profligate atmosphere from the very infancy, because "it is nothing uncommon to hear of pregnant women, in the belief that it will tend to their happy delivery, making a vow, with the consent of their husbands, to devote the child in the womb, if it should turn out a girl, to the service of the Pagoda. And, in doing so, they imagine they are performing a meritorious duty". It has been recorded that there was a number of dancing girls of easy virtue at a temple in Orissa who were employed to sing

and dance before the god. About such dancing girls attached to temples, ^{the} Census Report of Mysore for 1911 says, "The practice of dedicating girls to temples or as public women (styled as Besavi) obtains in a few of the 'lower' castes, but it is gradually getting into disfavour. Among Kurubas when there are no sons in the family, the eldest girl is occasionally so dedicated..... Among Voddas, if an adult female cannot get anyone to marry her, she may be dedicated to a free life in the name of Yellama who is their patron deity". ⁷⁰ The prevailing idea seems to be that the deva-dāsīs attached to the temple of Kārtikēya are his wives and as such they may prostitute themselves; similarly, the Marlis, the dancing girls in Maratha temples, are married to Khandoba, the ⁷¹ Maratha god of war. Frazer, who holds the view that this sort of prostitution may be the relic of early communism says "In course of

69. Ward, View of the History, etc., of the Hindus, ii.134.

70. A.C.I., 1911, vol. xxi (Mysore) Report, p.99.

71. T.C.C.P., iii. 376.

time as the institution of individual marriage grew in favour, and the old communism fell more and more into discredit, the revival of the ancient practice even for a single occasion in a woman's life became ever more repugnant to the moral sense of the people, and accordingly they resorted to various expedients for evading in practice the obligation which they still acknowledged in theory. One of these evasions was to let the woman offer her hair instead of her person; another apparently was to substitute an obscene symbol for the obscene act. But while the majority of women contrived to observe the forms of religion without sacrificing their virtue, it was still thought necessary to the general welfare that a certain number of them should discharge the old obligation in the old way. These became prostitutes either for life or for a term of years at one of the temples; dedicated to the service of religion, they were invested with a sacred character, and their vocation, far from being deemed infamous, was probably long regarded by the laity as an exercise of more than common virtue".⁷²

72. A.A.O., 1.40 sq; cf. H.H.M., vol. 1. p. 219.

Again, ⁷³as to the custom of offering a wife to a guest, put forth as evidence of communism in women, Avebury has found a recognition of "a right inherent in every member of the community, and to visitors as temporary members"⁷⁴. But this custom is more commonly thought to be only a demonstration of hospitality which in some form or other exists universally at the lower stage of civilisation.⁷⁵

Against the view of scholars who hold that there was a stage of promiscuity in the history of human civilisation, it has been put forward that the mental element of jealousy observed among male quadrupeds renders the theory that promiscuous relations existed in a state of nature very unlikely. It is ^{certainly} not supported by biology and comparative psychology. Darwin writes, "Therefore looking far enough back in the stream of time, and judging from the social habits of man as he now exists, the most probable view is that he originally lived in small communities, each with a single wife, or if powerful with several, whom he jealously guarded against all other men";

73. C.I., 1911, vol. 1. (India) Report, p. 248.

74. O.C., p. 107.

75. O.D.M.I., i. 572 sqq.

but at the same time he admits that something like promiscuous intercourse was very common afterwards in all parts of the world.⁷⁶ Moreover, eminent scholars have asserted that jealousy⁷⁷ is almost unknown among uncivilised peoples and that this mental element is feeble in conditions where the notion of ownership in which jealousy originates is not fully developed.⁷⁸ On the other hand, Westermarck says that "the prevalence of male jealousy both among the anthropoid apes and the existing races of men constitutes a strong prima-facie evidence of its prevalence in mankind in earlier ages as well. And this would have made general promiscuity exceedingly improbable, to say the least."⁷⁹

Bachofen's contention in *Antiquarische Briefe* that the Aryans practised promiscuity, counting kinship only through the mother is contradicted by Schrader, who holds that the Indo-European family was based on strictly agnatic principles, a conclusion arrived at through purely linguistic

76. Darwin, *Descent of Man*, ii. 394 sq.

77. Giraud-Toulon, *Les origines de la famille*, p.79 note.

78. P.P., ii. 102 sq.

79. H.H.M., vol. i. p. 300.

considerations. He says, "the blood-relationship which was established, when the wife became a mother, between her relations and the children of herself and her husband, was regarded by the Indo-Europeans, at any rate at first, as⁸⁰ equally slight"; and this is borne out by the fact that Indo-European languages have an identical name for the father's brother, but not for the mother's brother, viz., Husband's brother: Sans. dēvár, Armen. taigr, G. Sañe, Lat. lēvir, Lith. doweris, O.S. dōverō, A.S. tæcor,⁸¹ O.H.G. Zeihhur.

McLennan says that "tradition is found everywhere pointing to a time when marriage was unknown, and to some legislator to whom it owed its institution; among the Egyptians to Menes; the Chinese to Fohi; the Greeks to Cecrops; the Hindus to Śvetaketu"⁸². This is supported by the well-known passage in the Mahābhārata where Pāṇḍu makes the following speech to his queen, Kuntī, "..... women formerly were not immured within houses and dependent on husbands and other relatives. They used to go about freely, enjoying

80. Schrader, Prehistoric Antiquities of the Aryan Peoples, pp.377-78.

81. Ibid., p.377.

82. McLennan, Studies in Ancient History, p.95.

and if true, it would indicate that laxity among brāhmanas (which various stories suggest in early times) did not disappear till some time later than the Bhārata battle.⁸⁴ But it is worth remembering that such an indication of sporadic sexual laxity is an entirely different thing from proof of the existence of a stage of culture when promiscuity prevailed and consequently the institution of marriage was unknown. Again, in the Mahābhārata, it is said that in the land of the Uttarakurus⁸⁵ and in the city of Māhishmatī,⁸⁶ there was no institution of marriage. It seems, however, most probable that Uttarakuru was only an imaginary country; and the statement concerning Māhishmatī is merely a traveller's tale. The passage is indeed only a passing observation made by the Pāṇḍava conqueror, Sahadeva, who stayed there for a short while in the course of his military campaigns. There are other passages in the epic which disclose an astounding laxity of sexual morality, and these have often been quoted to prove promiscuity in pre-historic times.

84. Pargiter, Ancient Indian Historical Tradition, p.328.

85. M. Bh., i.cxxii.

86. M. Bh., II.31.

Sarmishthā is made to say that there was no distinction between a friend's husband and one's own⁸⁷; but such a statement can be explained if we take into consideration the desperate situation that she was put in by the infliction of the punishment of perpetual maidenhood on her. When the king Yayāti yielded to Sarmishthā's passion, he defended his conduct to Śukra, his father-in-law, by saying that his sense of duty and chivalry compelled him to do it. These traces of promiscuity in the sense of laxity of morals in the Mahābhārata cannot be referred to the Vedic period, because the institution of marriage was, it is quite clear, already well established in the Rigveda. Moreover, the religious and social necessity of marriage was fully recognised. It is even said that a person⁸⁸ was considered unholy if he was unmarried. Indeed, marriage opened a new chapter of⁸⁹ good life to be led on the principles of truth and duty. Nor can a stage when marriage did not exist be attributed to a pre-Vedic period or indeed to any

87. M. BH. I. LXXXII.

88. Taittirīya Brāhmaṇa, II, 2, 2, 6 (ed. Ānandāśrama Press, Poona)

89. Rigveda, x, 85, 23.

period in Aryan social evolution since a survey of the vocabularies of Aryan language indicates that even in the Indo-European period the institution of marriage was established. That the Indo-Europeans before their dispersal had already developed an orderly family life on firm principles⁹⁰ can be established on a linguistic basis by a comparative study of the family⁹¹ organisation of the Indo-Germanic peoples in the primeval period. Moreover, it is significant that the Vedas are silent concerning promiscuity. Indeed, Meyer has attempted to explain away the traces of promiscuity found in the Indian epic by saying, "The sexual freedom among the more primitive peoples, dwelling around the Indian Aryans and among them, may well have led to the conception that these were indeed the more primitive conditions; and what is old, is also, to the Hindu, that which is perfection. It should be borne in mind that among the Uttarakurus, dwelling far to the north, and the people, dwelling in the farthest south, a love paradise of this kind is to be found. Here and there, anyhow, there may have been in Epic times, too,

90. Meyer, Sexual Life in Ancient India, vol.1, p.124 f.n.

91. P.A.A.P., pp.375-378.

great immorality and hetaeristic abominations, it may be, not without the influence of the non-Aryan tribes. The culture of India is, indeed, from earliest times, a mixture, ever growing in complexity, of what is Aryan and what is due to the aboriginal population. But this is the exact opposite of 'survivals'.....
....., of the far past of the Aryans."92

Hocart in his great survey of kingship proves that among many peoples of all grades of civilisation, the ceremonies of marriage are connected with and often indeed modelled upon those of the coronation of kings. He says that it is very remarkable that the bride and bridegroom are accorded with the honour which is appropriate only for a king. This shows that the ceremony of marriage itself is of royal origin.⁹³ He goes on to suggest that marriage like coronation was the prerogative only of kings, the common people probably living in promiscuity. But there is a close parallel between the status of kingship and the status of the husband in a patriarchal society. Mommsen points out with regard to Roman kingship, "As the clans resting

92. S.L.A.I., vol.1, p.130., f.n.1.

93. Hocart, Kingship, p. 60.

upon a family basis were the constituent elements of the State, so the form of the body-politic was modelled after the family both generally and in detail. The household was provided by nature herself with a head in the person of the father with whom it originated, and with whom it perished. But in the community of the people, which was designed to be imperishable, there was no natural master Accordingly one from its own ranks became its "leader" (rex) and lord in the household of the Roman community; as indeed at a later period there were to be found in or near his dwelling the always blazing hearth and the well-barred store-chamber of the community, the Roman Vesta and the Roman Penates - indications of the visible unity of that supreme household which included all Rome. The regal office began at once and by right, when the position had become vacant and the successors had been designated, but the community did not owe full obedience to the king until he had convoked the assembly of freemen capable of bearing arms and had formally challenged its allegiance. Then he possessed in its entirety that power over the

community which belonged to the house-father in his household; and like him, he ruled for life..... He had the same right as a father had to exercise discipline and jurisdiction..... As the house-master was not simply the greatest but the only power in the house, so the king was not merely the first but the only holder of power in the State"⁹⁴ .

Taking the above facts and opinions into consideration, it seems improbable that in the earliest stage of human civilisation anything corresponding to promiscuity ever really existed. On the contrary, elements of consistency and regularity seem to have existed even in very early times, though it would be entirely conjectural to suggest anything with regard to the nature and character of the most primitive form of marriage. It can, however, be said that it is the instinctive inclination of one sex to form a more or less permanent connection with the other. Westermarck aptly summarises the position when he says, "In all probability there has been no stage in the social history of mankind where marriage has not existed, human marriage apparently being an

94. Mommsen, History of Rome, vol.1, pp.81-82.

inheritance from some ape-like progenitor. Marriage is defined as a more or less durable connection between male and female, lasting beyond the mere act of procreation, till after the birth of the offspring. This is marriage in the natural history sense of the term. As a social institution, on the other hand, it has a somewhat different meaning: it is a union regulated by custom or law. Society lays down rules relating to the selection of partners, to the mode of contracting marriage, to its form, and to its duration".⁹⁵

CHAPTER II.

VEDIC LITERATURE AND TRADITION.

The stages of life or Āśramas are traditionally divided into four ~~stages~~ with a gradual course of duties deemed to guide an individual, step by step towards the realisation of the supreme spiritual ideal. Through these stages of the Brāhmanical life a man may subdue his Self by self-discipline, self-denial, religious observances, austerity and intensive effort of mind and body. Deussen is right when he translates āśramas by 'places of mortification'. He says, "The whole life should be passed in a series of gradually intensifying ascetic stages, through which a man, more and more purified from all earthly attachment, should become fitted for his 'home' (asta), as the other world is designated as early as the Rig-veda (x, 14.8). The entire history of mankind does not produce much that approaches in grandeur to this thought". These four āśramas or stages of life are Brahmachārīn, Grihastha, Vānaprastha and Sannyāsīn.

The second stage of life or grihastha is the most important stage in the social life; the most imperative duties of a householder or grihastha are

to set up a family to beget children and to endeavour to reach the religious goal of the Brāhmanas by charity, by sacrifice, by worship and by renunciation. Placed, as he is, a householder must be very careful lest the springs of the higher life in him should not be dominated by the wordly life. He lives in surroundings which are highly unfavourable to spiritual progress; his struggle is not an easy one. The ideals of every religion are in conflict with the material conditions of everyday life. Yet the family must continue. The duties of the brahmachārīn and grihastha, if conscientiously discharged, lead to the ultimate goal. The Chhāndogya Upaniṣad states, "He who learnt the veda from a family of teachers, according to the sacred rule, in the leisure time left from the duties to be performed for the Guru (teacher); who, after receiving his discharge, has settled in his own house, keeping up the memory of what he has learnt by repeating it regularly in some sacred spot; who has begotten virtuous sons, and concentrated all his senses on the self, never giving pain to any creature, except at the tīrthas (sacrifices etc.) - he who behaves thus all his life, reaches the world of Brāhman, and does not return, yea, he does not return".²

Though the āśrama-stages are not mentioned as such in the Rig Veda, the institutions ^{or orders} of student (bramachārīn), householder (grihapati),³ and ascetic (muni) are already there. Grihapati (householder) which literally means master of the household is frequently mentioned in the hymns, as well as in later vedic works. According to the Vasishṭha Dharma-Sūtra the station of a householder is much more important than all other orders. It says, " A householder alone performs sacrifices, a householder alone performs austerities, and therefore the order of householders is the most distinguished among the four"; and his position is explained by means of several metaphors: As all rivers, both great and small, find a resting place in the ocean, even so men of all orders find protection with householders. As all creatures exist through the protection afforded by their mothers, even so all mendicants subsist through the protection afforded by householders"⁴.

The tendency of any pseudo-asceticism which tended to lower the birth-rate in society was considered as a criminal breach of social laws. The parting advice of a teacher to a young man who is about to

3. Law, Studies in Indian History and Culture, p.3.

4. Vasishṭha Dharma-Sūtra, viii. 14-16.

enter the world after the completion of his education is "Do not cut off the line of children"⁵ The reason for this is plain. It is only by a continuation of the rites that the welfare of the dead ancestors (pitris) is maintained. Hence the prominence of rites of adoption in Hindu society.

Vedic society was founded upon the patriarchal family, that is to say, the relationship was counted through the father.⁶ Indeed the family was both patripotestal and patrilocal. As in ancient Rome, in the Vedic period, too, the wife on marriage left "her old agnatic family and became a member of her husband's agnatic family, so as to pass under the power of the head of that family, thus standing to her husband, if he happened to be himself the head of his family, in the position of a daughter".⁷ The despotic nature of the rule of the husband over the wife is apparent from the custom common to both the Romans and Indians, in accordance with which it was within the discretion

5. Taïttiriya Upanishad, 1.11,1.

6. The Cambridge History of India, vol.1, p.88; Barnett, Antiquities of India, p.4.

7. Leage, Roman Private Law. p. 97.

of the father to 'take up' the child which his wife bore to him and to decide thereby whether the child should live or die. In ancient Rome the right of the father to decide as to whether his child should live or be sold was implied in the patria potestas.⁸ Though this is not quite so apparent in India, it has been pointed out that a Rigvedic passage (v.2.1.) seems to imply that the mother 'gives' the child to the father.⁹ Again, it has been suggested that another passage in the Taittirīya-Samhita¹⁰ points to the practice^{10a} of exposure of daughters and implies the custom of the child being taken up by the father. Certain scholars have traced this despotic nature of the patria potestas of the husbands beyond

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8. Marquardt, *Privatleben*, pp.3,81, as quoted in P.A.A.P., p.389 ; L.P.L., p. 90.
9. Ludwig, *Rigveda*.vi.142. as quoted in P.A.A.P.p. 390.
10. Zimmer, *Altindisches Leben*, p.319; Ludwig, *R.V.* V. 568. as quoted in P.A.A.P. p.390.
- 10a. Dharma, however, does not agree with other scholars on the subject of the exposure of female children, and says "There is no proof that the Vedic Indians practised the exposure of female children as contested by certain scholars like Zimmer who refer to certain passages in the later Samhitās. The argument for infanticide has been based on the passage which refers to the laying aside of the female child (which does not amount to exposure) while a boy was lifted up by the parents with expressions of joy and delight. The resentment at the birth of a girl was a natural sentiment in early society especially among the orientals" J.I.H. vol. XXVI. pt.3, 1948 Dec. p.249.

the Vedic period. It clearly cannot be said that the Indo-European women, under the potestas of their husbands were in any way equal with them. On the contrary, in the primitive Indo-European period, the man was the absolute master, and the wife, whether acquired by capture or purchase, was merely a servant and bearer of children, and this fact is borne out by the absence of an¹¹ Indo-European name for the wedded pair. Indeed, it appears in India too, that in very early times women were regarded as chattels, and were bestowed in marriage as mere objective gifts in the Vedic age. Moreover, it is recorded in the famous gambling hymn of the Rigveda that a wife was even staked in play by her husband. The said hymn goes on to say, "This (my wife) has not been hungry (with me), nor was she overcome with shame; kind was she to me and to my friends; yet for the sake of one or other die, I have¹² deserted the affectionate spouse".

It would appear, however, that though the proprietary rights of a husband in his wife were theoretically established, the actual exercise of these rights was always discountenanced by society.

11. P.A.A.P., p.387.

12. Rigveda, X, 34.2. by "die" dice is intended by trans.

It might have been felt all the time that only an inhuman and senseless person could conceive of exercising such intolerable rights. In fact, it is clear that in cultured circles a wife was, as the word Dampatī shows, regarded as the joint owner of the family property along with her husband.

It has frequently been said that Aryan marriage was generally monogamic. However, polygamy was not unknown, though probably confined mainly to the aristocratic and princely class.¹³ Nevertheless, any assertion to the effect that monogamy was the normal order of the society and polygamy was gradually going out of vogue would be unjustifiable. The hymns of the Rigveda indicate that both monogamy and polygamy existed. Sarkār, however, summarises the evidence in the following way: "The correct interpretation of that evidence therefore, must depend on the historical data supplied by the traditional accounts. These make it plain that polygamy never died out in any part of the Vedic age, but existed before it, during it, and after it; only there were several well-marked periods and groups in which the practice was more in evidence than in the others,

13. The Cambridge History of India, vol.1. p.88.

owing to circumstances not unintelligible; and at the same time there were other groups and periods more or less characterized by monogamistic ideals. On the whole, however, polygamy was associated with 'brāhman' influence, dynastic expansion, or frequent wars, and was on the increase towards the close of the Vedic age; while monogamistic tendencies were more apparent amongst the non-brāhmanic, or minor, ^{or} temporarily unimportant principalities¹⁴".

The prevailing ideal was that wedded pairs should remain faithful and devoted to one another. But the ideal was undoubtedly modified by the custom of polygamy which brought in its train unchastity on the part of the neglected wives, and this is witnessed to by many passages in the Rigveda which describes wives entertaining secret ¹⁵ lovers. But "adultery was generally regarded among Aryan peoples as a serious offence against the husband of the woman affected. We accordingly find in the legal literature of India traces of the rule that an adulterer can be slain with ¹⁶ impunity, if taken in the act.

14. Sarkar, Some Aspects of the Earliest Social History of India, p. 198.

15. Rv., IV, 5, 5; IX.32, 5; 38, 4; 96, 22,

16. Leist, Altarisches Jus Gentium, 276, et seq. 309; see Macdonell and Keith Vedic Index of Names and Subjects, I, 396-397.

17 Weber, however, has adduced some material indicating an indifference to these matters in Vedic times, and Ludwig has adopted the same view. But as Delbruck has clearly shown, the evidence is not convincing; the cited prescriptions forbidding connection with another man's wife during a certain rite do not imply that such connection would otherwise be allowed; the ritual of the Varunapraghāṣas, when a wife names her lover or lovers, seems originally to have been a solemn means of banishing the evil brought on a family by a wife's fall; Yajñavalkya's famous saying that no one cares whether a wife is 'unchaste' (parahpumsā) or not is a mere mis-translation, the expression parah-pumsā really meaning 'removed from the male persons'".

We find, however, an incantation in the Rigveda in which the King's wife attempts to make a concubine innoxious and find less favour than

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17. Weber, Indische Studien, 10,83 et seq; see V.I., i. 396-397.
 18. Delbruck, Die Indogermanischen Verwandtschafts-namen, 545 et seq; see V.I. i. 396-397.
 19. Taitt.Sam., V.6,8,3; Maitr.Sam., iii.4,7; see V.I. i. 396-397.
 20. Maitrayaniya Samhitā, i,10,11; Śatapatha Brāhmaṇa, ii. 5,2,20. see V.I., i. 396-397.
 21. Śat.Br., i. 3,1,21; see V.I., i. 396-397.
 22. Macdonell and Keith, Vedic Index of Names and Subjects, i. 396-397.

herself from their lord. The above verse is as follows: "The sun has risen; my good fortune has dawned; I, knowing this, have obtained my husband triumphing (over my rivals).

I am the banner, I am the head, I am exalted, soothing (my lord); my husband must conform to my will, as I am victorious over my rivals.

Triumphant, I conquered these my rivals, so that I might rule this hero and his people".²³

On the whole it seems that the purer form of monogamy did not evolve, until after the separation of the Indo-European peoples, and that it evolved from a primitive practice of polygamy, presumably confined only to the rich, because of the fact that a wife had to be bought first and then maintained. When the wife was acquired by purchase, however, there was no scruple against acquiring other wives in the same way either in order to obtain male progeny, which is admittedly the chief object of ancient marriage or to obtain more assistance in the home and field or more supervision of the owner's growing wealth. Another reason for taking more than one wife was in order to contract new family connections. But it is clear that a second wife was usually taken only

in default of male children.

The Indo-Aryan family organisation was, as it has already been mentioned, patriarchal, but the motive of the patriarchy was the necessity of procuring a son who would perform the funeral rites, offering oblations of food and water to the pitris or ancestors. The continuance of the family line ^{the point of view of} from succeeding to the family property is secondary to this. It is, therefore, intelligible that the desire for a male child should have been predominant in the Indian mind. Among the sacramental rites to be performed before the birth of a child, pumsavana is specifically performed for the birth of a male child. Therefore, in these pre-natal rites, the desire for the birth of a male child is quite evident. The celebration of the pumsavana ceremony is carried out when the moon enters a constellation bearing a male name, and the articles used in the rite indicate that the purpose is clearly to procure a male child. Similarly, the Simantonnayana ceremony, or 'parting of the pregnant wife's hair' is also performed when the moon is in a constellation bearing a male name, and the words which stand for the articles used in the ceremony should also be of

the masculine gender. ("The implements used and the Nakshatra should be of male gender")²⁵.

The desire for a son has also been emphasised in many passages in the Rigveda. In the marriage hymn²⁶, the verses of which are even now recited at the marriage ceremony, the bridegroom prays, "Grant, Indra, showerer, that this (damsel) may have excellent children, and be very fortunate," and in the same hymn he invokes, "Indra, showerer, make her the mother of sons, pleasing (to her husband); give her ten sons, make her husband the eleventh²⁷. Viśvāmitra prays for sons, "Agni,..... may there be to us sons and grandsons born in our race, and may thy goodwill ever be upon us".

This idea has been repeated several times in the family book of the Viśvāmitras in the Rigveda.²⁸

Vasishtha prays, "When the wives (of the gods) come before us, may the dextrous Twashtri grant us male progeny"²⁹. In regard to adopting a son from the family of a stranger, Vasishtha says, "That is not offspring which is begotten by another:

25. Sāṅkhāyana Gṛihya Sūtra, I. 2.2.6.

26. Rv., X.85.

27. Ibid., X.85, 25, 45.

28. Ibid, III. 1, 23;5,11;6,11;7,11;15,7;23,5.

29. Ibid., VII. 34, 20.

alter not the paths (of the generation) of a blockhead. One not acquitting debts, although worthy of regard, yet begotten of another, is not to be contemplated even in the mind (as fit) for acceptance: for verily he returns to his own house; therefore let there come to us (a son) new-born, possessed of food, victorious over foes³⁰". Here it is plain that the acceptance of an adopted son is only^a substitute for lineal descent. The practice which, however, is witnessed to in the hymns later became established.

The desire for a son is also amply witnessed to in the hymns of the Atharvaveda, and many of these verses are recited at the impregnation and conception ceremonies (garbhādhāna and pūṣavana). One of the verses runs thus, "O Dhātār, with best form, in the two groins of this woman, do thou set a male (pūṁś) son, to be born in the tenth³¹ month". Again, "Go apart, O Barhatsāmā; let an embryo lie into thy womb; the gods, soma-drinkers,³² have given thee a son partaking of both".

Concerning the blessings conferred by a son we find

30. Ibid., VI. 4, 7-8.

31. Atharvaveda, V. 25, 10., (H.O.S.)

32. Ibid., V. 25. 9. (H.O.S.)

it said in the Aitareya Brāhmaṇa, in connection with the reply of Nārada to a question by the King Haris̥chandra of the Ikshvāku race, "A debt he pays in(having)him and immortality he attains - that father who seeth the face of a son born living. The delights in the earth, the delights in the fire, the delights in the waters of living beings, greater than these is that of a father in the son. By means of a son have fathers passed over the deep darkness. The self is born from the self. The son is a ship, well found, to ferry over. What is the use of dirt, what of goat-skin, what of long hair, and what of fervour? See a son, O Brāhmanas, this is the world's advice. Food is breath, clothing is protection, gold an ornament, cattle lead to marriage, a wife is a comrade, a daughter a misery, and a son a light in the highest heaven. The father entereth his wife - having become a germ he entereth the mother; in her becoming renewed he is born in the tenth month. A wife has her name of Jāyā, since in her he is born again. A sonless person cannot attain³³ heaven". The Gobhila Grihya Sūtra, while prescribing a ritual when the wife is in labour, says that a husband should say in^a low voice that a male would

33. Aitareya Brāhmaṇa, VII.15, quoted in the cultural Heritage of India, vol. 3., p.187.

be born, keeping the name of the son a secret. The said verse runs thus, "when the child is appearing, he strews (Darbha grass) round the fire and sacrifices two Agya oblations with this verse, 'she who athwart' (MB.I. 5,6), and with (the verse), 'Vi⁶pākit has taken away'.

" A male he will be born, N.N. by name' - (in this passage of the last verse) he pronounces a name

34

" What that (name is), is kept secret".

Moreover, the Śatapatha Brāhmaṇa in describing the garbhādhāna ceremony expresses a strong desire
35
for a son.

It seems, however, that the evil of polygamy is admitted in the latter part of the Vedic age. A R̥igvedic verse mentions a wife cursing her fellow-wife. This, of course, evidently refers to polygamy. The said verse is as follows, "I dig up this most potent medicinal creeper, by which (a wife) destroys a rival wife, by which she secures to herself her husband.

" O (plant) with up-turned leaves, auspicious, sent by the gods, powerful, remove my rival and make

34. Gobila Gṛihya Sūtra, II.7.14-16.

35. Śatapatha Brāhmaṇa, IX.4.14-20, quoted in C.H.I., vol. 3, p.

my husband mine alone.

"Excellent (plant), may I too be excellent, excellent amongst the excellent, and may she who is my rival be vile amongst the vile.

"I will not even utter her name, no (woman) takes pleasure in that person; may we remove the other rival wife to a distance.

"I am triumphing, thou art triumphant; we two³⁶ being powerful will triumph over my rival".

Concerning the position of women in the Vedic period Dutt says, "Still more grateful to us is the picture of cultured ladies who were themselves Rishis, and composed hymns and performed sacrifices like men. For there were no unhealthy restrictions against women in those days, no attempt to keep them secluded or uneducated or debarred from their legitimate place in society. There is mention of veiled wives and brides, but no allusion to women being kept in seclusion. On the contrary, we meet them everywhere in their legitimate spheres of action, taking a share in sacrifices, and exercising their³⁷ influence on society". The position of a wife was quite clearly a high one. Whenever the husband made any offerings to the gods by sacrificing at the

36. Rv., X. 145.

37. Dutt, A History of Civilisation in Ancient India, vol. I, p. 67; cf. Ibid., Early Hindu Civilisation, p. 67.

household altar, which was the form of worship in the Vedic period, the wife was a necessary participant; it was their joint duty, and it had to be performed by them both jointly. Therefore, in the Veda speaks of loving husbands inviting their wives to participate with them at the sacrifice. The Taittirīya Brāhmaṇa declares, "There is no sacrificial rite for a man who is without a wife". Visvavārā, for instance was a pious lady and composer of hymns, ^{the} Rigveda mentions about her in the following way: "Visvavārā, facing the east, glorifying the gods with praises, and bearing the ladle with the oblation, proceeds (to the sacred fire)", and she prays to the fire-god, Agni, "Repress, Agni, (our foes to ensure our) exceeding prosperity: may thy riches ever be excellent: preserve in concord the relation of man and wife, and overpower the energies of the hostile". Side by side with this we have the glorious picture of Indrasenā Mudgalānī, a heroic lady who with a brave heart drove her chariot and helped her husband in winning cattle in a memorable battle. The Rigveda goes on to describe the incident in the following way: "The wind

38. Rv., X. 40, 10.

39. Taittirīya Brāhmaṇa, II. 2. 2. 6, quoted in the C.H.I., vol. 3, p. 195.

40. Rv., V. 28, 1.

41. Ibid., V. 28, 3.

raised her vesture when she won a thousand waggon-loads. Mudgalānī was the charioteer in the quest of the cattle, the army of Indra recovered (the spoil) taken in battle.

" The bull has been yoked for the destruction of the enemy; his long haired yoke-fellow made him roar; rushing on with the waggon of the irresistible yoked (bull), the warriors coming forth went to Mudgalānī.

" As a wife who has been abandoned rejoices to find her husband , as a cloud expanding when pouring forth rain with the aid of the earth's disc; with her eager (to recover the cattle) for our charioteer, may good fortune, together with food, be given to us" ⁴²

We also get an interesting picture of domestic ⁴³ life from the short dialogue between Agastya and his wife Lopāmudrā; she pined away for the company of Agastya who was bent upon austerities and penances. The apparent hard-heartedness of Urvāśī is more to dissuade Purūravas not to lay down his life for his love for her and is a dramatic twist for better effect, not implying any scorn of women. The verse goes on to state: "(Urvāśī:) Die not, Purūravas, fall not,

42. Ibid., X. 102, 2, 6, 11.

43. Ibid., I. 179, 1-4.

let not the hideous wolves devour thee. Female friendships do not exist, their hearts are the hearts of jackals"⁴⁴.

The high standard of respect paid to women is witnessed to by the fact that a wife is reckoned as the other half which completes the husband. The Taittiriya Brāhmaṇa says, "The wife is verily the half of the self"⁴⁵. The Rigveda says "A man's wife Maḡhavan, is his dwelling; verily she is his place of birth"⁴⁶. The position assigned to a wife by the Śatapatha Brāhmaṇa is, therefore, that the husband reproduces himself through the wife who is for that reason called Jāyā. It says, "The wife, in sooth, is one half of his own self; hence, as long as he does not obtain her, so long he is not regenerated, for so long he is incomplete complete I want to go to that supreme goal", thus he thinks"⁴⁷.....

The realisation of the beauty and personality of women is clearly evident in^{11Ka} Vedas. Chakravarty says, "We have to take note that the word nārī (woman) in the Vedas conveys a sense of dignity, meaning netrī, that is, directress"⁴⁸. As a tribute to the character

44. Ibid., X. 95, 15.

45. Tal. Br., III.3.3.5, quoted in the C.H.I.vol.3, p. 200.

46. Rv. III. 53, 4.

47. Śat. Br., V.2.1.10.

48. C.H.I. vol. 3, p.211.

and form of women the very plan of the Vedic altar was made in the form of a woman. The Śatapatha Brāhmaṇa says, "The Vedic (altar) should be broader on the west side, contracted in the middle and broad again in the east; for of this shape they praise a woman Thereby he (the householder) makes the altar pleasing to the gods".⁴⁹

On the other hand, it must be admitted that the reactionaries were not wanting. In the midst of these glowing tributes to women for their manifold graceful qualities we find that Indra, the Zeus of the Vedic pantheon, is reported to have said of woman's mind that it is 'ungovernable'.⁵⁰ Again, as against the honourable interpretation of the word nārī as netrī the same word nārī has been interpreted as nīrtī, that is to say, evil personified.⁵¹ The Śatapatha Brāhmaṇa says, "The wives have no right whatever^{either} to their own bodies or to a heritage".⁵² Some scholars have, however, suggested that "Though a wife was highly respected a woman as such was held in little esteem. In the Taittirīya Saṁhitā it is stated that women are unsubstantial, and

49. Śat.Br., I. 2.5.16.

50. Rv., VIII. 33.17; Sāyana comments that a woman's obstinacy is the reason for it.

51. C.H.I., vol. 3, p. 212.

52. Śat. Br., IV. 4.2.13.

consequently excluded from inheritance. Yāska⁵³ gives two views, one agreeing with this, and another to the effect that they can inherit⁵⁴. It is, however, doubtful how far, in view of the facts mentioned above, any distinction is justifiable between wives and women generally in regard to the respect that they commanded. It cannot be denied that a daughter was, in spite of all her freedom to choose her husband, always a source of anxiety to the father on account of the difficulty in finding a desirable husband, and hence in such an old work as the Aitareya Brāhmaṇa, while the wife is called a companion or friend, a daughter is spoken of as the source of humiliation. This probably shows that even in the Vedic period the opinion of the Aryans in regard to the position of women was still oscillating between the deep respect expressed in many of the hymns, and their insignificance in the every day social fabric. The existence of the bride-price and the expense of the marriage ritual probably lie at the root of the evident clash in opinion. It is clear that theoretically the idealistic view predominates.

53. The author of Nirukta, cf. Macdonell, A Vedic Reader, p. xxix.

54. Collected Works of R.G. Bhandarkar, vol.2, p.461.

Vedic evidence can be adduced to show that a wife was initiated into the studies of the Vedas and at the time of the sacrifices she wore round her waist a rope of sacred grass. The Śatapatha Brāhmaṇa says, "He (the Āgnīdhra) then girds the wife (of the sacrifices). She, the wife, truly is the hinder part of the sacrifice. 'May the sacrifice go on increasing before me!' thus (she thinks while) he girds her, thinking, 'may she sit thus girt by my sacrifice. 55 Explaining this Eggeling says, "According to ^{the} Taittirīya Brāhmaṇa the symbolical meaning of this act is, that it represents the vratopanayana, or initiation of the wife into the sacred rite. The girding of the wife would thus possess a significance similar to that of the ordinary upanayana, or investiture of the youth with the sacred cord" 56. This custom was preserved in later times. It has been observed, "There are two classes of women - those given to Vedic learning and those given to domestic duties. For the former are proscribed the sacred cord, the five sacrifices, vedic studies and living on alms received in the family. For the latter the sacred cord is 57 to be given before marriage". Upanayana for girls

55. Sat.Br., 1.3.1.12.

56. Eggeling, Sat.Br., S.B.E., vol.12, p.72. f.n.2.

57. Hārīta Saṁhitā, quoted in Mādhava's Commentary on the Parāśara Smṛiti, Bom. Sans. Ser. Part I, ch. II. p.8.

fell into disuse . In the Grihya Sūtras for the first time we come across the attempts at setting limits to the rights of women. They were rudely warned not to interfere with the Vedic mantras. Evidence is, however, available of their being still educated. Though they were not yet denied all their rights concerning the household fire-worship, they were wholly excluded from the major rituals which were performed publicly. This would be the natural outcome of the growth of professional priestcraft. While Brāhmanism remained a household cult it did not exclude women from the rites. Nevertheless a wife still had her social rights in the domestic affairs. A wife could not only meet the people who assembled at her husband's house and attend feasts and sacrifices gaily dressed and decked with ornaments, but also had an executive authority over the slaves and farm-labourers as the rightful mistress of the household.

It is evident that the religious obligation has not yet ^{as} emerged that every girl must be married. On the contrary we come across allusions to unmarried women who remained in the household of their fathers and naturally claimed and obtained a share of the

58. Majumdar, Outline of Ancient Indian History and civilisation, p.47.

father's property. A passage of ^{the} Rigveda says,
"As a virtuous (maiden), growing old in the same
dwelling with her parents, (claims from them her
support), so come I to thee for wealth.....".⁵⁹
It is probable that the girls had some voice in
the selection of their husbands, though obviously
their selection was not always a happy one. It is
written, "how many a woman has been gratified by the
flattering praise of man's desire, when the bride is
fortunate and beautiful, she of herself chooses
her husband amongst men".⁶⁰ In this we find
the idea of ^{the} svayamvara of later times in embryo.
It will be presently seen how this simple conception
of self-choice of the women grew into a magnificent
and elaborate institution in later times. There is,
however, little doubt that fathers exercised an
effective control in the selection of husbands for
their daughters. They gave daughters in marriage,
when grown up, gracefully adorned and decked with
ornaments. It has been said, "The soma-juices pressed
(at the sacrifice) adorned like a bride who hath a
father flow to Vāyu".⁶¹ It is clear that daughters were

59. Rv. II.17,7.

60. Ibid., X. 27,12.

61. Ibid., IX. 46, 2.

also a source of anxiety to the father because of difficulties in finding a desirable husband. It is for this reason that perhaps in the Aitareya Brāhmaṇa a wife is called a friend or companion, whereas a daughter is considered a source of humiliation.⁶²

There are no grounds for presuming that moral conditions were very high in this period.

Winternitz wisely says, "However, we must not form too exalted an idea of the moral conditions in ancient India..... We hear in the hymns of the Rigveda of incest, seduction, conjugal unfaithfulness, the procuring of abortion....."⁶³ Occasionally there are allusions to women who went astray. It is mentioned, "Adityas, upholders of pious works, and who are to be sought by all, remove sin far from me, like a woman delivered in secret: knowing, Mitra, Varūna, and (universal) gods, the good that follows from your hearing our prayers, I invoke you for (our) protection"⁶⁴. There are also instances of unmarried girls who gave themselves up to prostitution as they had no brothers to watch over their morals, and wives who deceived their husbands, for it is mentioned, "Like women who have no brethren, going

62. C.W.B., vol. 2, p.461.

63. Winternitz, A History of Indian Literature, vol. 1, p.67.

64. Rv., II. 29,1.

(about from their own to their father's house), women adverse to their lords going astray, so the wicked, false (in thought), false (in speech), they give birth to this deep abyss (of hell)"⁶⁵.
⁶⁶
 It has been contended by some scholars that at this period there was a "grand system of courtesans", as in the time of Buddha in Vesali, but the matter remains somewhat doubtful.

Reference has already been made to unmarried girls who spent their life in their father's house. Some of the love charms and spells that we come across in the Atharvaveda must have been intended to be used by such unmarried girls who had been unsuccessful in winning affection of their chosen lover. There are, also, passages which show that lovers eloped with their sweethearts. One passage refers to a girl who wanted a husband and approached a youth who was anxious for a wife:

"Seeking a husband she hath come; and I came
 longing for a wife:

Even as a loudly-neighing steed my fate and
⁶⁷
 fortune I have met"

65. Ibid., IV. 5.5.

66. Pischel and Geldner, Vedische Studien, I, p. XXV,
 quoted in W.H.I.L., vol. I, p. 67

67. Av. II. 30, 5. (Trans. by Griffith.)

Passages also record the sending of lover's presents and of the sentimental yearnings for the absent lover. That children were born out of wedlock is also clear. Indeed, there are occasional references to the exposure of illegitimate children and the god Indra is sometimes represented as rescuing these abandoned children. Concerning this, a passage runs, "Lord of horses, thou hast brought the son of Agra from his dwelling, where he was being devoured by the ants: when extricated, although blind, he distinguished the serpent; and when he came forth the joints that had been sundered in the ant-hill were re-strung"⁶⁸.

69

The well known marriage hymn of the Rigveda is one of the most imaginative poems in the whole collection. It contains an allegory of the marriage of Sūryā, daughter of the Sun, with Soma or the Moon, and it throws a flood of light on the nature of marriage. The general picture is pleasing and the style magnificent. The most striking passage runs, "Abide here together; may you never be separated; live together all your lives, sporting with sons

68. Rv., IV. 19, 9; see also Ibid., IV. 30, 6.

69. Ibid., X. 85.

and grandsons, happy in your own home" ⁷⁰.

The Vedic marriage ceremony commenced with the bridegroom's coming to the bride's house and ends when he takes her hand in the presence of the god Agni ⁷¹ who blesses the couple and gives them children.

The first rite, then, in the Vedic marriage ritual is the Indrānī-Karma, when the bridegroom goes to fetch his bride. He gives her a robe and anoints her, reciting the Sūryā-Sūkta. Besides this, other symbolical and prophylactic rites are observed, the mill-stone playing an important part in the symbology of the ritual. Then followed the formal Kanyā-Pradāna ceremony, by which the bride was given away in marriage by her father or his representative.

It is probable that the bride and the bridegroom took seven steps towards the north-east, that is to say, the Sapta-Padī, an essential ceremony in Hindu marriage even to-day, was observed. This was part of the modern Pānigrahana or hand-taking ceremony, though it is not specifically mentioned in the marriage hymn. In this ^{Vedic} rite, it is found that the bridegroom takes the hands of the bride and says, "I take thy hand for good fortune, that thou mayest

70. Ibid., X. 85, 42.

71. Vaidya, History of Sanskrit Literature, p.107.

attain old age with me as thy husband; the gods Bhaga, Aryaman, Savitrī, Purandhi have given thee⁷² to me, that I may be the master of a household". The wedding fire was prominent in the Kanyā-Pradāna. Round it the bride was led by the bridegroom or a Brāhman, keeping her right-side towards it, and on it the parched grain was thrown. The fire, itself, was carried home by the young couple to the bridegroom's house and "was kept perpetually alight⁷³ as the centre of the household worship". The bride was carried to her new home in a car (Vi-Vah)⁷⁴ drawn by bullocks and horses given by her father. Before getting in, she anointed the wheels and axle of the car and the oxen, and placed branches of a fruit-tree upon the car. The first night was spent in the house of a Brāhman man or woman, where the wedding fire, which they brought with them in a vessel,⁷⁵ was replenished. Bhāṇḍārkar says, "A wife and husband became by their marriage Dampati or 'two masters of the house'. The gods gave her to him (the bridegroom) for house keeping; their union was as permanent and intimate as that of the Earth and the Heaven; and she became his friend and companion. . . . This is the substance of the Vedic mantras repeated by the bridegroom at the marriage.

72. Rv., x. 85, 36.

73. Barnett, Antiquities of India, p. 145.

74. V.H.S.L. p.107.

75. A.I., p. 144.

And in keeping with the ideal, the vedic ritual makes her a partner in all the religious duties. The husband cannot keep the sacred fire without her; her presence and co-operation are necessary in all the great sacrifices. The fire kindled on the occasion of marriage had to be kept up; all the domestic ceremonies concerning him, her and the children were to be performed on it, and when either died, he or she was to be burnt by means of the fire. The fire was thus a standing symbol of their union."

76

No greater catastrophe could befall a Vedic householder than the premature death of his wife. The household fire brought home with the wife in the nuptial chariot now was converted into her funeral fire. Now the widower must either set up a new fire and seek a new partner or he must forsake the world to become a forest-recluse (Vānaprastha), as has been said, "two courses are open to him - either he must forsake the world and become a forest-recluse (Vānaprastha), or he must marry at once, immediately on the expiry of the period of impurity, if he prefers to continue in the householder's state, because the paramount duty of the householder, the daily offering of the agnihotra, cannot be carried on without the wife, and the discharge of this duty, which affects the whole of

his future life here and hereafter, is certainly⁷⁷ of far greater weight than any sentiment or emotion". This statement is highly significant because not only does it delineate the life of a householder but also it clearly explains the necessity for the remarriage of a widower.

The essence of Vedic marriage as described in the Marriage Hymn is Vahatu. This is the actual carrying away of the wife to her husband's house and there is a close parallel for it in the Roman⁷⁸ 'deductio in domum'. There are indications in the mantras that the bride was not only carried out of her father's house, but also outside her father's village. This is very likely, for it seems that ancient Aryan settlements and villages were exclusively agnatic, and the Aryans, who were exogamous, could not, therefore, give their daughters in marriage in the same village. Some of the mantras show that it was intended by the Vedic Aryans that a daughter who went out of the village should go⁷⁹ out forever. That the bride went to her husband's house after her marriage and not vice versa was a

77. C.H.I., vol. 3, p. 201.

78. L.P.L., p.102; Warde Fowler, Social Life at Rome, p. 142.

79. J.R.A.S.B. (Letters), vol. iv, 1938, no.2, p.151.

universal Indo-European custom, and cannot be said to have originated in the Vedic period. Schrader says, "I am convinced that only the connection of the daughter-in-law with the husband's relatives, and not the connection of the son-in-law with the relatives of the wife, can be established by Indo-European equations we find that the former (that is, the daughter-in-law in the husband's family) alone has a just claim to be descended from Indo-European times. The daughter-in-law is called: Sans. Snusha, Pers. Sunar, Armen. Nu, G. Vvóc, Lat. Nurus, Alb. Nuse".⁸⁰

These indications suggest that further attention should be paid to local exogamy. The existence of this in ancient China is clear, for the normal ancient Chinese village was clearly agnatic. Johnston says, "A typical village of Weihaiwei may be defined as consisting of a group of families all bearing the same surname and all tracing their descent from a single ancestor or a single ancestral stock, each family in the group constituting a semi-independent unit, owning its own lands, possessing certain rights over a common tract of pasture land.....".⁸¹

80. P.A.A.P., p. 375.

81. Johnston, Lion and Dragon in Northern China, pp. 134-135.

He further says, "The parents of bride and bridegroom may or may not be known to each other; as a rule they are strangers, for a girl is rarely married to a resident in her own village. The reasons for this are not far to seek. As we have seen, a typical Weihaiwei village is composed of persons of one surname..... All persons of the same surname are regarded as blood relations, and as such they cannot inter-marry. The father of a family must therefore find husbands and wives for his children in some village other than his own".⁸²

82a

The Rākshasa or the Kshātra marriage would seem to take the reader back to pre-historic times when woman was regarded as a mere prize of war.

Altekar has attempted to explain the idea implicated when he says, "In this marriage the victor carried away the bride and married her. The fight was necessary either because women offered real resistance on account of the ill-treatment which they received from their husbands in primitive society, or because parents were unwilling to lose the services of their daughters, or because it was regarded as a point of

82. Ibid., p. 206.

82a. Vasishtha says, "There are six marriage rites, (viz) that of Brāhman (brāhma), that of the gods (daiva), that of the Rishis (ārsha), that of the Gandharvas (gāndharva), that of the Kshatriyas (kshātra), and that of men (mānusha)" - Vasishtha, 1, 28-29. It seems therefore, that according to him Kshātra marriage is appropriate only for the kshatriyas.

honour for a warrior that he should have for his wife a woman, whom he could point out also as a trophy of war".⁸³ Though the marriage by capture prevailed⁸⁴ in the earliest age of the Indo-European period, we have not very many instances of the Kshātra marriage recorded in ancient Indian literature. It is said, however, in ^{the} Rigveda that Vimada won his bride in a battle. It is written, "In like manner as a worshipper strews the sacred grass for the Nasatyas, so do I urge on their laudations, as the wind drives on the clouds: they who gave a bride to the youthful Vimada, and bore her away in their car outstripping the rival host".⁸⁵

There was yet another form of marriage which was prevalent in the Vedic period. This was the Āsura marriage. In this form of marriage a man got his bride by paying a price for her, that is to say, the Āsura was marriage by purchase. It is an undisputed fact that in this period a bride could be won by giving rich presents to the future⁸⁶ father-in-law. This purchase of brides is perhaps

83. Altekar, The Position of women in Hindu Civilisation, p. 44.

84. P.A.A.P., p. 383.

85. Rv. I. 116.

86. Alt. Leb., p. 310, quoted in P.A.A.P., p. 382.

derived from the status of the girl or of her father's family. If no price was paid for a wife, she was worthless. At any rate the amount of the bride-price seems to have varied in accordance with the respectability of the bride's father's family. There is some difficulty in accounting for the name of this form of marriage. Altokar suggests, "Marriage by purchase was the order of the day among ancient Assyrians, and this circumstance may have been responsible for the name Āsura being given to that form of marriage where a bride-price was paid".⁸⁷ There are many passages in Vedic literature bearing testimony to the prevalence of the custom of bride-purchase. That rich presents were given by the son-in-law is also referred to, for a passage runs, "I have heard, Indra and Agni, that you are more magnificent givers than an unworthy bridegroom.....";⁸⁸ but it seems that such a custom was not esteemed very highly as is evident from the fact that the son-in-law in such cases was called Vijāmātā or disreputable.

Āsura marriage is sometimes regarded as a higher form of marriage than the Kshātra marriage on

87. P.W.H.C., p. 46.

88. Rv. I. 109, 2.

account of the economic factor involved in it. When the value of a woman was admitted and a bride-price had to be paid, as was the case in an Āsura marriage, it also probably saved the wives from ill-treatment at the hands of their husbands since a change of wives would be expensive.

When the Vedic sacrifices were practised, a householder who was to carry out a sacrifice had to invite a large number of priests in connection with the rites. If the householder was impressed by the learning and other personal qualities of one of the priests, during the prolonged period of the sacrifices, he would often give his daughter in marriage to him. Marriage was at this time post-puberty, and the girls could, therefore, form opinions about their future husbands and even help the parents to choose them. This form of priestly marriage which is called Daiva disappeared with the Vedic sacrifices.

The conception of marriage as a secular contract in contradiction to a religious sacrament did not exist in ancient India. It appears, however, that even in Vedic literature there is a perceptible tendency towards contractual marriage. In the story of

88. Rv. I. 109, 2.

89. P.W.H.C., p. 53.

Śītā Sāvitrī we find that she refused to marry Soma, unless he accepted her conditions. It seems, however, that this tendency did not make headway. Marriage was still regarded as essentially a sacred religious union of the two persons, brought about by destiny. Marriage united the parties in indissoluble wedlock, and the couple, therefore, prayed that their love and union ^{might} be a lasting one. It is indeed noteworthy that the vows that each of the spouses took before the sacred fire amply emphasised all the terms which could possibly be inserted in a purely legal marriage contract. Their admitted community of interests precluded the possibility of a purely contractual view of marriage.

"The relation between the husband and the wife is through dharman", that is to say, for the performance of their joint duties, says Āpastamba (dharmāddhi sambandhaḥ - II.13.13). In a passage in the Atharvaveda the wife is assured by the husband,

"I take thy hand in mine for happy fortune that thou mayst reach old age with me thy consort. Gods, Aryaman, Bhaga, Savitar, Purandhi, have given thee to be my household mistress.

Bhaga and Savitar the God have clasped that hand of thine in theirs.

By rule and law thou art my wife: the master of thy
house am I".⁹¹ Therefore, neither the husband nor

the wife has any right to dissolve the marriage.

It is not through mere volition or human effort that the couple are united in wedlock, but through divine dispensation, the man and wife being so united into one entire inseparable self not only in this world but also in the life beyond; that is to say, she is

a part of his very self. They are like a pair of

horses yoked together in a chariot.⁹² A verse

expresses gratitude to Agni for making the husband

and wife of one mind,⁹³ and another is addressed to

Agni who is himself identified with the couple,

meaning thereby that the husband and wife are united

through the oblations offered in the fire. This

spirit of union is stressed beautifully in the

marriage ritual, when after taking the seven steps

together, the bridegroom addressed the bride:"A

friend be thou, having paced these seven steps with

me May I gain thy friendship, may I never

fall off from thy friendship; may thou never fall

off from my friendship. Let us unite together; let

91. Av., XIV. 1, 50-51 (Trans. by Griffith)

92. Rv. VIII. 33, 18.

93. Ibid., V. 3, 2.

94. Ibid., VIII. 84, 7.

us resolve together that bound in love, and ever radiant in each other's company, meaning well towards each other, sharing together all enjoyments and pleasures, we may unite our thoughts, our duties and our ideals"⁹⁵. Again in the Atharvaveda we find a prayer of the husband and wife for unity of mind. The passage says:

"Sweet are the glances of our eyes, our faces are as smooth as balm.

Within thy bosom harbour me; one spirit dwell in both of us!"⁹⁶ As for the wife's personal

status the Rigveda identifies her with ^{the} home. It is written, "A man's wife, Maghavan, is his dwelling, verily she is his place of birth: thither let thy horses harnessed (to thy car), convey thee...."⁹⁷ and again the Śatapatha Brāhmaṇa says, "... The house being the wife's resting-place, he thereby establishes her in that safe resting-place, the house....."⁹⁸

Vedic literature makes it evident that only post-puberty marriage was in vogue. Vimada is described as having defeated his rival in battle and won his bride, and obviously this could only be achieved by a full-grown youth. Again, a prayer of a wife is mentioned in which she prays for the growth

95. Apastamba Mantra-Brāhmaṇa, 1.3.14, quoted in C.H.I., vol. 3, p. 196.

96. Av., VII. 36. (Trans. by Griffith). 97. Rv. III. 53, 4.

98. Śat, Br., III. 3.1.10.

of hair at puberty. Moreover, it is found that a wife excited the passion of her husband in privacy by telling him that she had profuse marks of youth on her person. It is written, "She, who, when her desires are assented to, clings as tenaciously as a female weasel, and who is ripe for enjoyment, yields me infinite delight. Approach me, (husband); deem me not immature: I am covered with down like a ¹⁰⁰ewe of the Gandhārin". However, we can only guess as to the actual age of marriage in this period.

In the Avesta it is said that generally girls were ¹⁰¹married at the age of fifteen or sixteen. It is probable that the same age of marriage for the girls might have prevailed in ancient India. Also Udvāha, the term for marriage, meaning 'carrying away (of the bride)' implies post-puberty marriage, because immediately after the marriage the bride went to the house of her husband to live with him as his wife. The marriage hymn indicates that the bride was mature at the time of marriage; she is described as blooming with youth and ripe for a husband: "Soma was desirous of a bride; the two Aswins were the two groomsmen when Savitṛi gave Sūryā, who was ripe

99. Rv., VIII. 92, 4-7.

100. Ibid., I. 126, 6-7.

101. Vendidad, 14, 15, quoted in R.W.H.C., p. 58.

for a husband, (to Soma endowed) with intelligence".¹⁰²
It is clear, therefore, that Vedic Aryan girls were
married when they were fit for consummation or, in
other words, when they desired to have husbands.¹⁰³
The expression of the hope that the bride will,
immediately after the marriage, take over the charge
of the household also implies the same thing.^{103a}

In this connection it is worth noting the
view of Macdonell and Keith. They summarise the
available facts as follows: "Marriage in the early
Vedic texts appears essentially as a union of two
persons of full development. This is shown by the
numerous references to unmarried girls who grow old
in the house of their fathers, and who adorn
themselves in desire of marriage, as well as to the
paraphernalia of spells and potions used in the
Atharva-Vedic tradition to compel the love of
man or woman respectively, while even the Rigveda
itself seems to present us with a spell by which
a lover seeks to send all the household to sleep
when he visits his beloved. Child-wives first
occur regularly in the Sūtra period, though it is

102. Rv., X. 85,9.

103. V.H.S.L., p.107; cf. Das, Rgvedic Culture, p.251.

103a. Rv. X. 85,46.

still uncertain to what extent the rule of marriage before puberty there obtained. The marriage ritual also quite clearly presumes that the marriage is a real and not a nominal one: an essential feature is the taking of the bride to her husband's house, and the ensuing cohabitation¹⁰⁴". Kunhan Raju says, "Nothing definite can be said about child marriage. There is a hymn describing the departure of the bride after marriage from the parent's home to the bridegroom's home. The whole trend of the hymn is that the marriage was after the girl had attained to age. There is the frequent mention of the marriage of Sūryā with the Aśvins. This also gives the impression of marriage at a grown up stage of the girl. There is no reliable evidence on the point in the Vedic literature"¹⁰⁵.

The Gṛihya Sūtra literature definitely prescribes that consummation should take place on the fourth day from the date of marriage. Chaturthīkarma or 'the event of the fourth day' is the technical name for the ritual prescribed at the consummation of the marriage. There is also provision in the Gṛihya Sūtra in the event of the

104. V.I., 1. 474-475.

105. C.H.I., vol. 1, p.38.

bride being in her monthly courses at the time of the marriage. Certain of the Grihya Sūtras have, however, laid it down that a bride should be nagnikā (naked) at the time of the marriage. Later commentators have interpreted this term as denoting a bride of five or six who has no sense of shyness and moves about without covering her person in the proper way. It seems that this interpretation is uncalled for, because one Grihya Sūtra definitely says that a bride who is nagnikā should also be a virgin at the time of her marriage. The Hiranyakesin Grihya-Sūtra says, "With their (that is, parents') permission he should take a wife belonging to the same caste and country, a 'naked' girl, a virgin should should belong to a different Gotra (from her husband's)".¹⁰⁶ Such a requirement of virginity would be rendered meaningless if it was applied to a child-bride of five or six. It seems, therefore, that the meaning of the term nagnikā, as used by the Grihya Sūtra, is this that the bride was mature enough¹⁰⁷ to meet her husband in privacy.

Subsequently, however, the attitude towards the age of marriage had started to change.

106. Hiranyakesin Grihya-Sūtra, 1.19, 2.

107. Ind.Cul., vol. IV.(July,1937-April,1938),p.457.

The Dharma-Sūtras ^{had} already began to advocate that the marriage of girls should not be delayed long after their puberty. However, as the opinions of the Dharma-Sūtra writers were divided on the subject we get two different opinions based on different considerations. Vasishṭha was prepared to advise a delay in marriage for a period of three years if there were insurmountable difficulties in the way of marriage. He says, "A maiden who has attained puberty shall wait for three years, After three years (have passed), she may take a husband of equal caste"¹⁰⁸. Similarly, Baudhāyana says, "Three years let a marriageable damsel wait for the order of her father. But after (that) time let her choose for herself in the fourth year a husband (of) equal rank. ~~If no man (of) equal rank~~ If no man (of) equal (rank) be found, she ¹⁰⁹ may take even one destitute of good qualities".

Gautama, however, maintains that marriages must be celebrated within three months of puberty. He says, "A (marriageable) maiden (who is not given in marriage) shall allow three monthly periods to pass, and afterwards unite herself, of her own will, to a blameless man, giving up the ornaments received from

108. Vasishṭha Dharma-Sūtra, XVII, 67-68.

109. Baudhāyana Dharma-Sūtra, IV, 1,14.

her father (or her family). A girl should be given in marriage before (she attains the age of) puberty. He who neglects it, commits sin¹¹⁰.

It seems that the idea behind the divergence of opinion was, on the one hand, ^{that} a mature bride was needed for the continuance of the family in view of the shortness of the span of life, and on the other, the imperative necessity of selecting a bride who was chaste in mind and body.

It seems that in the Rigvedic period when the Yama-Yamī dialogue was composed any intimate relation between a brother and sister was already regarded as incestuous, but still such a relationship might not have been impossible; ~~it is~~ it is evident from the fact that this incestuous connection had been made a subject matter of serious composition with a moral to it, which would not have been the case if such ^a relationship was considered impossible. The said dialogue runs: "(Yamī speaks). The immortals take pleasure in (a union) like this which is forbidden to every mortal; let thy mind then concur with mine, and as the progenitor (of all) was the husband (of his daughter), do thou enjoy my person.

(Yama speaks.) We have not done what was done formerly

110. Gautama Dharma-Sūtra, xviii, 20-22.

(Yamī speaks.) The divine omniform genitor Twashtri, the progenitor, made us two husband and wife, even in the womb: none frustrate his undertaking: earth and heaven are conscious of ^{the} our union.

(Yamī speaks) The desire of Yama has approached me Yamī, to lie with him in the same bed; I will abandon my person as a wife to her husband; let us exert ourselves in union like the two wheels of a wagon.

(Yama speaks.) The subsequent ages will come, when sisters will choose one who is not a brother (as a husband); therefore, auspicious one, choose another husband than me, make thine arm a pillow for thy mate.

(Yama speaks.) I will not unite my person with thine: they call him who approaches a sister, a sinner. Enjoy pleasure with some other than me; thy brother, auspicious one, has no such desire".¹¹¹
Explaining the underlying meaning of the above dialogue Winternitz says, " an old myth of the origin of the human race from the first pair of twins underlies the conversation. Yamī tries to tempt her brother Yama to incest, in order that the human race may not die out. In passionate words, glowing with desire, the sister draws the brother on to love. In gentle, deliberate speech, pointing to the

111. Rv., X.10, 3,4,5,7,10, 12.

eternal laws of the gods; which forbid the union
of blood-relations, Yama repulses her"¹¹².

The utterance of Yama that in subsequent ages
sisters will unite with persons other than brothers,
is significant, for it may imply that brother and
sister marriage was within the memory of the poet's
generation.

No marriage was, however, prohibited merely on
the ground of gotra, that is to say, that a group
of persons were related with each other by spiritual
or blood relationship. Of course, the word
gotra occurs in the Vedic literature, but there
it is used only in the sense of a cowstall.

The prohibition of Sagotra and Sapravara marriages
cannot be definitely traced to any early period^{112a}.
Such a prohibition is probably for the first time
met with in the Grihya Sūtra literature. It is
sometimes suggested that this prohibition was due
to the influence of the non-Aryans who prohibited
marriage among the worshippers of the same totem.

The dowry system, though it existed in ancient
India, was no obstacle to marriage. Daughters were
given away by their fathers as mere chattels and

112. W.H.T.L., vol.1, p. 105.

112a. But Kane says, "The system of pravaras is very
ancient and almost goes back to the times of
the Rigveda".- J.R.A.S.E.(N.S.) vol.II (1935)
p. 12.

as such it was the bride's father and not the bridegroom's, who was in the position to demand money at the time of marriage. It has already been mentioned that in ancient Aryan society the bridegroom carried away his bride from her father's village and family, thereby depriving the father's family of her services. In view of this important fact it is clear that a bridegroom could not demand any payment at the time of marriage. We cannot, however, ignore isolated instances of dowries in the royal and rich families. In such comparatively few cases it is found that gifts of cattle and jewellery were given to the sons-in-law at the time of marriage. The Atharvaveda says,

"No lovely wife who brings her dower in hundreds
rests upon his bed,
Within whose kingdom is detained, through want of
sense, a Brāhman's dame". 113

It has already been mentioned that in Vedic society the husband and wife were the joint owners of the household and the family property. The husband was required to take a vow at the time of marriage that he would not interfere with the economic interests of his wife. Āpastamba infers from this accepted theory of joint ownership that a wife was entitled, during the absence of her husband, to incur the usual household expenditure. Āpastamba says, "No

division takes place between husband and wife. For, from the time of marriage, they are united in religious ceremonies. Likewise also as regards the rewards for works by which spiritual merit is acquired. And with respect to the acquisition of property. For they declare that it is not a theft if a wife expends money on occasions (of necessity) during her husband's absence." ¹¹⁴

Strīdhana which is closely connected with Sulka or bride-price is not identical with ^{the} woman's property, but it is used in a technical sense.

Concerning this Mulla says, "It is clear from the Smṛitis that the term strīdhana is not used in its etymological sense of 'woman's property', as comprising any kind of property possessed by a woman but that it is used in a technical sense. Summarising the Smṛiti texts, we may say that it is only gifts obtained by a woman from her relations and her ornaments and apparel which constitute her strīdhana and that the only sorts of gifts from strangers which come under that denomination are presents before the nuptial fire and those made at the bridal procession. But neither gifts obtained

114. Āpastamba Dharma-Sūtra, II. 6.14,16-20.

from strangers at any other time, nor her acquisitions by labour and skill, constitute her strīdhana. This is strīdhana in its technical sense".¹¹⁵ It seems that society was unwilling at first to invest women with proprietary rights in immovable properties; their rights of exclusive and full ownership in moveable properties such as ornaments, jewellery etc. were fully recognised. The custom of bride-price, which was discountenanced by society, may have helped a good deal to develop strīdhana. It has been suggested that the parents often ~~handed over~~ the whole or part of the bride-price to the daughter as a token of their affection, and that the daughter enjoyed it as her separate property during her life and after her death, it passed on to her children. It is clear that a father-in-law could claim this property back from the son-in-law if his daughter died childless, for in such a case the son-in-law was expected to¹¹⁶ marry a second time. In the Vedic age the bride received wedding presents generally consisting of clothes and ornaments and these presents belonged absolutely to her. It is not certain, however, if women were allowed to alienate such property

115. Mulla, Principles of Hindu Law, p.111.

116. P.W.H.C., p. 259.

without the concurrence of their husbands.

It is probable that they could not. The scope of the strīdhana was gradually extended in course of time, and eventually it included the presents given by the husband subsequent to the marriage.

Baudhāyana who denies to wives the rights of inheritance, clearly admits their title to strīdhana. Baudhāyana says, "The daughters shall obtain the ornaments of their mother, (as many as are) presented according to the custom (of the caste), or anything else (that may be given according to custom)."¹¹⁷

The position of a widow in regard to her rights of inheritance to the property of the deceased husband was no better in the Vedic age, for the Śatapatha Brāhmaṇa clearly mentions that women are incapable¹¹⁸ of inheriting any property. In a patriarchal society it is, of course, usual to find that only male children are capable of inheritance. It should be noted, however, that the position of a widow in

117. B.D.S., II.2,3,43.

118. See supra.

regard to inheritance was not as precarious as it seems, because, through the extensive prevalence of the customs of Niyoga, which will be considered later, even childless widows could bear sons capable of inheriting their deceased husband's property and in such cases the widow would naturally have effective control over their deceased husbands' property, inherited by sons raised by Niyoga.

The custom of Satī or the self-immolation
118a
of widows did not exist in Vedic times. The Avesta does not mention it, nor is it referred to in the funeral hymns of the R̥gveda which would certainly have been the case had the custom been observed. Moreover, it is not mentioned in the Brāhmaṇa literature or, the Gṛhya-Sūtras. Indeed, there is no trace of this custom till a much later period. It seems that this custom arose owing to

118a. Concerning the antiquity of the word Vidhava or widow, Datta says, "Vidhava or widow is a woman whose husband is dead and who has not married again. It is a very old word which can be traced beyond the vedic language to Indo-European origin, and exists with little modifications in most languages of the Indo-European family. Thus we get in Latin Vidua, Italian Vedova, Spanish Viuda, French Veuve, Old Slavonic Vidova, Russian Vdova, Old German Wituwa, Gothic Widuwo, Old English Widowe and Widuwe, and Persian Beva...curiously Sadhava is a comparatively new word which does not occur in..Vedic literature. On the other hand, the word Avidhava in the sense of a woman not widowed was commonly used in Vedic times".-I.H.Q., vol.14(1938), p.661.

the superstitious idea that the dead requires in the next world all the things that they needed in this world. On the evidence of certain passages of ^{the} Atharvaveda indicating formalities concerning sati, it has, however, been frequently suggested that this custom prevailed among the Aryans. The funeral ritual describes ~~how~~ it was the custom for a widow to lie with the dead body of the husband on the funeral pyre, until she was asked to descend. The Atharvaveda says,

"Choosing her husband's world, O man, this woman
lays herself down beside thy lifeless body.
Preserving faithfully the ancient custom, Bestow
upon her both wealth and offspring.
Rise, come unto the world of life, O woman: come,
he is lifeless by whose side thou liest.
Wifehood with this thy husband was thy portion,
who took thy hand and wooed thee as a lover.
I looked and saw the youthful dame escorted, the
living to the dead: I saw them bear her.
When she with blinding darkness was enveloped,
then did I turn her back and lead her homeward.
Knowing the world of living beings, Aghynya!
treading the path of Gods which lies before thee
This is thy husband: joyfully receive him and let
him mount into the world of Svarga" 119

The above passage has been commented upon by Griffith, who says that it was the custom among the Aryan immigrants of the earliest times to observe sati, but ^{that} this custom was not generally practised when these funeral hymns were composed, ~~for~~ the

widow was asked by the brother-in-law, foster-son or an old family servant to descend, leaving the body of the dead.¹²⁰ But even then the actual significance of the above passage remains somewhat doubtful. The Indian custom of sati has a close parallel in China. It is, however, interesting to note the observation made by Johnston while discussing these matters in China; he says, "There is no doubt that the suicide of widows in China is a survival of the ancient custom (which flourished in countries so far apart as India and Peru, Africa and China) whereby wives and slaves were as a matter of ordinary duty expected to follow their husbands and masters to the grave; and though the day has probably long gone past when such suicides were encouraged or actually enforced by the deceased's relatives, it cannot be doubted that to this day public opinion in China is strongly on the side of the widow who chooses to follow her lord to the world of ghosts".¹²¹

However, the tendency of the age was rather to allow re-marriage of widows than to permit them to

120. Griffith, The Hymns of the Atharva-Veda, p. 236, f.n. 1 and 2.

121. L.D.N.C., p. 225.

immolate themselves with their dead husbands, and¹²²
this is well emphasised in the Atharvaveda.

If widows were not allowed to immolate themselves, three ways of life remained open to them, namely, remarriage, Niyoga, or permanent widowhood. It is plain that the re-marriage of the widows was a common practice, but it will be presently seen that Niyoga was also a common alternative. The frequency of the remarriage of widows is also indicated by the Rigveda which says, "Rise, woman, (and go) to the world of living beings: come, this man near whom thou sleepest is lifeless: thou hast enjoyed this state by being the wife of thy husband, the suitor who took thee by the hand"¹²³. Moreover,^{the} Atharva Veda lays down a ritual regarding the remarriage of the widow probably with her brother-in-law. Indeed, the custom of marrying the brother of the dead husband was common in ancient India. In this connection Muir says, "When a woman has had one husband before, and gets another, if they present

122. See supra; but Mookerji says that the marriage hymn of the Rigveda shows that "the remarriage of a widow was not contemplated, though there is a reference to the widow married to the brother of her husband who died without issue"- Mookerji, Hindu Civilisation, p. 73.

123. Rv., X.18,8.

the aja pañcaudana offering, they shall not be separated. A second husband dwells in the same world with his re-wedded wife, if he offers the pañcaudana¹²⁴". It would seem, therefore, that the re-marriage of widows was in no sense disreputable or disgraceful.

It will be presently seen that the Dharma Sūtras provided for^{the} re-marriage of women under various circumstances, but some of the Dharma Sūtra writers insisted on their remarrying an eligible person who was related to the former husband, and such a person was very commonly the brother-in-law. Vasishṭha says "..... among those who are united (with her husband) in interest, or by birth, or by the funeral cake, or by libations of water, or by descent from the same family, each earlier named person is more venerable than the following ones. But while a member of her family is living, she shall certainly not go to a stranger"¹²⁵. Gautama also expresses a similar view when he says "A woman whose husband is dead and who desires offspring (may bear a son) to her brother-in-law. (On failure of a brother-in-law she may obtain offspring by cohabiting with) a Sapinda, a Sagotra,

124. Muir, Original Sanskrit Texts, V.306; cf. AV., IX.5, 27-28.

125. V.D.S., XVII, 79-80.

a Samānapravara, or one who belongs to the same caste. Some (declare, that she shall cohabit) with nobody but a brother-in-law." ¹²⁶ It appears that ^{the} abduction of girls was no bar to their subsequent marriage and that women were allowed to re-marry in case of an unconsummated marriage, or of disappearance of husband.

Vasishtha while enumerating the grounds for remarriage of women says, "If a damsel has been abducted by force, and not been wedded with sacred texts, she may lawfully be given to another man; she is even like a maiden". If a damsel at the death of her husband had been merely wedded by (the recitation of) sacred texts, and if the marriage had not been consummated, she may be married again. The wife of an emigrant shall wait for five years. After five years (have passed), she may go (to seek) her husband. If for reasons connected with spiritual or with money matters she be unwilling to leave her home, she must act in the same manner as if (her husband were) dead. In this manner a wife of a Brāhmaṇa caste who has issue (shall wait) five years, and one who has no issue, four years; a wife of the Kshatriya caste who has

issue, five years, and one who has no issue, three years; the wife of the Vaisya caste who has issue, four years, and one who has no issue, two years; a wife of the Sūdra caste who has issue, three years, and one who has no issue, one year"¹²⁷.

He, however, adds that if she can marry one who belongs to the family of the husband, she must not marry an outsider. Again, Baudhāyana in recognising the son of a remarried woman who has left her first husband on the ground of impotence says, "He is (called the son) of a twice-married woman (paunarbhava) who is born of a re-married female, (that is) of one who, having left an impotent man, has taken a second husband"¹²⁸. He

In laying down laws applicable to the case of abducted girls and unconsummated marriage,^{he} closely follows Vasishṭha when he says, "If a damsel has been abducted by force, and has not been wedded with sacred texts, she may lawfully be given to another man; she is even like a maiden. If, after (a damsel) has been given away, or even after (the nuptial sacrifices) have been offered, the husband

127. V.D.S., XV11, 73-78.

128. B.D.S., II. 2.3. 27.

dies, she who (thus) has left (her father's house) and has returned, may be again wedded according to the rule applicable to second weddings, provided the marriage had not been consummated".¹²⁹ On the other hand, Āpastamba says, "If a man approaches a woman who had been married before, or was not legally married to him or belongs to different caste, they both commit a sin".¹³⁰ This statement by Āpastamba, however, by putting the remarriage of women in the same category with breach of caste indicates that though such re-marriage was still practised, attempts had been made to stamp it out. The re-marriage of widows, however, only gradually came to be regarded as disreputable.

It has already been seen that by marriage a woman not only belonged to her husband but also to the family of her husband. This being so in the event of her becoming a widow, it was the solemn duty of the husband's brother or any other near relation to take her as his wife or, at any rate, to raise children by her. Mention has been made of Gautama's view which expressly says that a widow can bear a son to her brother-in-law, or on

129. Ibid., IV, 1, 15-16.

130. A.D.S., II, 6.13.4.

his absence, to any person who is a relation of the deceased husband. This was usually the case when a man died without leaving a male child. It has been noted that the strong desire for a son dominated the Indian mind of early times. In this context we can easily understand the social sanctity which provided a son for the dead man to save him from the spiritual calamity caused by the absence of a son to carry out the rites. Niyoga has the specific purpose of enabling the deceased's brother to raise a son by his widowed sister-in-law to bestow spiritual benefits on his dead brother. Another reason which doubtless played a considerable part in the acceptance of such a practice was the fear of the widow being lost to the family for good if she married a stranger. The adoption of a son was possible, of course, but it was not a complete solution to the problem. The legal fiction, in other words, existed, but was not entirely acceptable to Indian society. The prevalent opinion was that an adopted son born of another, was no son at all, because he had not the blood of the adoptive father's family; whereas a son born by Niyoga possessed at least the blood of

a near relative. It is evident that a son born by Niyoga resembled a *real* son as nearly as possible. This is the reason why the Dharmasūtras place the son born by Niyoga immediately after the real or aurasa son. The Vasishtha Dharma-Sūtra lays it down that property considerations should never be the motive for Niyoga. It is written, "No appointment (shall be made) through the ¹³² desire to obtain the estate". This injunction suggests that situation might arise in which, a stranger, to whom was delegated the function of raising a son to the dead man, instead of the brother-in-law, would exert greater influence on the inheritance of the son, which would be detrimental to the economic interest of the family. This custom continued till it was opposed by society as influenced by the religious doctrines of Āpastamba, Baudhāyana and Manu. Āpastamba definitely states that a son begotten by Niyoga could not confer any spiritual benefit on the deceased husband, because such a son belonged to his natural begetter. He says, "A Brāhmana (says), 'The son belongs to the begetter'. Now they quote also (the following Gāthā from the veda): '(Having considered myself)

formerly a father, I shall not allow (any longer) my wives (to be approached by other men), since they have declared that a son belongs to the begetter in the world of Yama. The giver of the seed carries off the son after death in Yama's world; therefore they guard their wives, fearing the seed of strangers. Carefully watch over (the procreation of) your children, lest stranger seed be sown on your soil. In the next world the son belongs to the begetter, an (imprudent) husband makes the (begetting of) children vain (for himself)"¹³³ Baudhāyana agrees with him. It is, however, apparent that this new school of thought was ineffective for a considerable time, because the same writers lay down detailed rules of procedure for Niyoga, although they condemn it. On the other hand, Vasishṭha and Gautama did not join in this condemnation of the custom, and it is interesting to note that they, on the contrary, permitted Niyoga at the option of the widow on the condition that she should not choose any person who was a stranger to the family, when a brother-in-law was available. It is apparent that though the custom could not be stamped out altogether, ~~affected~~ it had on the Niyoga a restrictive influence. It seems

that before Niyoga could be resorted to at least a year must elapse since the husband's death, and the widow could not be compelled to submit to it against her will. It is probable that at the root of such an injunction lay the possibility of the unscrupulous imposition of the brother-in-law on the widow. However, since it was prescribed that economic consideration should never be the motive¹³⁴ for having recourse to Niyoga, it would appear that it was considered as a moral and social duty. Indeed, in the case of a stranger, the parties never saw each other again after the conception of the child.

The four castes, in the form of the four varnas, or colours are, however, clearly mentioned in the Tenth Mandala of the Rigveda. It says "His mouth became the Brāhmaṇa, his arms became the Rājanya, his thighs became the Vaiśyas; the Sūdra¹³⁵ was born from his feet". It has sometimes been suggested that this verse is of later origin as its language is not so archaic as that of most other Rigvedic verses. But the idea of a division existed in embryo from the very beginning. The verse in question did not, of course, create the

134. See Supra.

135. Rv., X.90, 12; cf. A.S.B., J. and P., vol.26 (1931-35)

four castes, but it clearly indicates their existence in a developed form in the later Rigvedic period. The caste-system was a product of economic forces ^{rather} than of any religious precept. It was, at least in the beginning, elastic, not standing in the way of commensality or intermarriage. The people were divided into classes, and not as yet into castes, and each class was named in accordance with the work it had to perform. Macdonell says, "The word Brāhmaṇa, the regular name for a 'man of the first caste' is still rare in the Rigveda, occurring only eight times, while Brāhmaṇ, which simply means sage or officiating priest, is found ¹³⁶ forty-six times". The Rājanya or Kshatriya were primarily concerned with the government of the country. Viś was the general name of the people. All these classes performed the same Vedic sacrifices and followed the same Vedic faith. Those who did not perform sacrifice or believe in Vedic gods were termed Dāsa, and later on, Sūdras. Though every householder was a priest himself so far as the daily household fire-worship was concerned, being assisted by his wife who was called the Gṛha-Patnī or the mistress of the house, the vicarious services of experts (Brāhmaṇas or priests) who were well versed in the mantras and well acquainted with

136. Macdonell, History of Sanskrit Literature, pp.

the procedure of sacrifice, had to be requisitioned on special occasions when any big religious sacrifice had to be performed. These priests formed a class by themselves who devoted their time to learning and reciting the mantras and acquiring the knowledge of the intricate procedure of the various sacrifices (Yajñas) strictly conforming to long-standing practice. Moreover, it is found that "as in later times, so indeed already in the Rigveda, it was the custom that, at the king's side there stood a house-priest (Purohita) who offered the sacrifices for him".¹³⁷ There was no caste-system in the strict sense of the term, meaning thereby that the castes were mutually exclusive, and had elaborate rules in the matters of eating, drinking and marriage. In any case, it was only towards the close of the Rigvedic period that the four castes came to be regarded as distinct social institutions, when Aryan civilisation and the Aryan way of life had become more complex in character. It was still left open to an individual to take up an occupation according to his aptitude and no ignominy whatever was attached to the fact of a Rishi's father having been a physician or his mother

137. W.H.I.L., vol. 1, p.66.

a grinder of corn. It is written, "I am the singer; papa is the physician, mamma throws the corn upon the grinding stones; having various occupations, desiring riches we remain (in the world) like cattle (in the stalls): flow, Indu, for Indra"¹³⁸. It is well known that Viśvāmitra who was a member of the ruling class (rājanya) acted as a priest. The Rigveda mentions, "The great Rishi the generator of the gods, the attracted by the deities, the overlooker of the leaders (at holy rites), Viśvāmitra arrested the watery stream when he sacrificed for Sūdās; Indra, with the Kusikas was pleased"¹³⁹. It is, however, interesting to note that Viśvāmitra who was a priest did not hesitate to resort to arms. Keith writes, "The one great historical event which reveals itself in the fragmentary allusions of the Saṁhitā is the contest known as the battle of the ten kings. The most probable version of that conflict is that it was a contest between the Bharatas, settled in the country later known as Brahmāvarta, and the tribes of the north-west. The Bharata King was Sūdās, of the Tritsu family, and his domestic priest who celebrates,

138. Rv., IX. 112, 5.

139. Ibid., III. 53, 9.

according to the tradition, the victory
was Vashishtha. This sage had superseded in that
high office his predecessor Visvāmitra, under whose
guidance the Bharatas appear to have fought success-
fully against enemies on the Vipās and Sūtudrī; and
in revenge, as it seems, Visvāmitra had led against
the Bharatas ten allied tribes, only to meet with
destruction in the waters of the Parushnī¹⁴⁰. It
is also a significant fact that the descendants of
the great sage Bhrigu were expert carpenters. The
Rigveda says, "For you, Āśvins, we have made, we
have built this praise, as the Bhrigus (built)
your car"¹⁴¹. It has already been noted that Mudgala,
a Rishi, resorted to arms in pursuit of the robbers
who had stolen his cows and that his wife assisted
him by driving his chariot and coming to his rescue.
No profession was looked upon with contempt and
every art was supposed to be useful. It is, of course,
true that at the end of the Rigvedic period certain
occupations like agriculture and weaving were not
as highly estimated as before, for the Rigveda says,
"Those who do not walk (with the Brāhmanas) in this
lower world nor (with the gods) in the upper world

140. Co.H.I., I.p. 81-82.

141. Rv., X.39,14.

they are neither Brāhmanas nor offerers of libations; they devoid of wisdom attaining speech, having sin-producing (speech), becoming ploughmen pursue agriculture".¹⁴² Moreover, the learned priests devoted to philosophical speculation looked askance at all such materialistic activities. It must, however, be admitted that even in early Rigvedic times the Brāhmanas commanded a high respect from all people, including the princely class, for their spiritual accomplishments, and their supposed capability of pleasing the gods. It is written, "Verily he abides prosperous in his own abode; for him the earth bears fruit at all seasons; to him (his) subjects willingly pay homage, the prince, to whom the Brāhmaṇa first, (duly revered), repairs. Unopposed he is the master of the riches of hostile people, and of his own subjects; the Rājā who bestows riches upon the Brāhmaṇa seeking his protection, him the gods protect".¹⁴³ It appears that it was only gradually that ^{the} supremacy of the Brāhmanas over classes or castes was established.

The four castes, namely, Brāhmanas, Kshat^ṛiyas, Vaiś^yas and Sūdras are all mentioned in the Vedas; but the priestly caste already claimed the highest privileges. The Brāhmanas were already called the

142. Ibid., X.71,9.

143. Ibid., IV. 50, 8-9.

gods of the earth, and early literature bears ample testimony to it. It is written, "They, (the devout), praise Agni, the invoker (of the gods), the possessor of wealth, the beloved, the thoughtful; they have recourse to him as the bearer of oblations: to him, who is the life (of all living beings), who knows all things, the offerer of oblations, the object of worship, the sage: the sacred (priests), desirous of affluence, murmur(his praises) to obtain his protection; desirous of affluence, they murmur¹⁴⁴ (his praises) in their hymns". The priests are 'those who know', the guides through the wilderness of sacrificial practice, and it is no wonder that the claims of the priestly caste exceed all bounds. It is¹⁴⁵ written, "Yes, they are the very gods, the Brāhmanas". It is then not surprising to find that the priests, though strictly subjects of the Rājanyas, have always endeavoured to defy the kings they served. Winternitz rightly says, "Thus, at last, the conclusion is arrived at, that the Brāhman is no longer a 'human god' by the side of the heavenly gods, but that he raises himself above the gods. Already in the Śatapatha Brāhmaṇa it is said: "The Brāhman descended from a Risi indeed is all deities",¹⁴⁶ that is, in him all deities are incorporated".

144. Ibid., I, 128, 8.

145. W.H.I.L. vol.1, p.198.

146. W.H.I.L. vol.1, p. 200.

It has been suggested by scholars that the word Kshatriya used in the Rigveda is exclusively connected with royal authority. According to some scholars this word included not only the royal family and its branches, but also the nobles and their families. The sense of the words Rājanya and Kshatriya seem to be identical. Early literature is full of instances where people other than Kshatriyas fought in battle. It seems that in the early stages of the development of the nobility, it was not impossible for a Vaisya to become a Kshatriya. Evidence from early literature indicates that there was a time when occupations of individuals in Aryan Society were not strictly demarcated and as such a cultivator could become a warrior, if the circumstances so demanded. Nevertheless, there already was a formative sentiment that the intrusion of one profession into another could not be tolerated. Generally speaking up to this period the main bulk of the Aryan population was still considered as one. Therefore, inter-marriage among different classes or castes was common and unrestricted. But in course of time when the caste-system was firmly established, such inter-caste marriage was altogether prohibited. It seems that such marriage was looked upon with disfavour long before it was strictly forbidden. Similarly, the cleavage between

147. For details, see Rawlinson, India, p.26.

the Sūdras and other castes became wider with the passage of time. The climax was reached in the time of the Dharma-Sūtras when marriage between a Sūdra¹⁴⁸ and a member of other castes was prohibited.

148. Majumdar, Corporate Life in Ancient India, pp. 152-153.

CHAPTER III.

EPICS AND BUDDHIST LITERATURE.

The Rākshasa or Kshātra marriage has been fully described in the epics and is usually supposed to be the proper form of marriage for Kshatriyas. It seems that the element of heroic capture preserved in this form of marriage was necessary because it was as has been mentioned^{1a}, regarded as a matter of honour for a Kshatriya to have for his wife, a woman, whom he could also point out as a trophy of war. This has been made clear by Śrīkrishna in his speech to Arjuna. The speech runs: "O bull amongst men, self-choice hath been ordained for the marriage of Kshatriyas. But that is doubtful (in its consequences), O Pārtha, as we do not know this girl's temper and disposition. In the case of Kshatriyas who are brave, a forcible abduction for purposes of marriage is applauded, as the learned have said. Therefore, O Arjuna, carry away this my beautiful sister by force, for who knows^{1b} what she may do at a self-choice. This passage

1a. see supra chapt. 2.

1b. M.Bh., 1,221.

gives us a glimpse of the mental prediction^{li} of the Kshatriyas in this matter, and it is clear that the Kṣātra form of marriage was preferred to Svayamvarā or self-choice. Again, the Mahābhārata tells us that when Bhīṣma saw that his brother^a had attained his majority, he decided to give him Vichitra-vīrya in marriage. As he heard that the daughters of the king of Kāśī were to be married in Svayamvarā, he went there and having defeated the kings who had assembled on this occasion, he brought Amvikā and Anvālikā, the daughters of the King of Kāśī, as brides for his brother. However, that the traditional eight forms of marriage were acknowledged in the Mahābhārata is clear from the speech of Bhīṣma who says, "The wise have directed that when an accomplished person has been invited, a maiden may be bestowed on him, decked with ornaments and along with many valuable presents. Others again may bestow their daughters by accepting a couple of kine. Some again bestow their daughters by taking a fixed sum, and some take away maidens by force. Some wed with the consent of the maidens, some by drugging them into consent, and some by going^{un} to the maidens' parents and obtaining their sanction. Some again obtain wives as presents for assisting at sacrifices. Of these, the learned always applaud

2.
the eighth form of marriage." That in epic times the Āsura marriage was also practised can be specifically proved from many significant passages. It is clear in both the epics that at the time of the marriages of Gāndhārī, Mādri and Kaikeyī a considerable bride-price was paid to their guardians, though one feels that the custom of bride-price was not favoured. Nevertheless, it seems to have prevailed in some sections of Indian society. This is quite clear from the reply of the King of Madra to Bhīshma, who asked for the hands of Mādri, his sister for Pāṇḍu. The King said, "There is a custom in our family acted upon by our ancestors, which, be it good or bad, I am incapable of transgressing. It is well-known, and therefore is known to thee as well, I doubt not. Therefore, it is not proper for thee to tell me, - Bestow thy sister - The custom to which I allude is our family custom. With us that is a virtue and worthy of observance." The passage also records the reply of Bhīshma who said, "O King, this, no doubt, is a virtue.....Thy ancestors were observant of custom. There is no fault to find with it. It is also well-known, O Salya, that this custom in respect of family dignity

hath the approval of the wise and the good." This^{3.} custom was, therefore, followed at last by some people in spite of the acknowledgement that it was not altogether proper. For instance, the Padma-Purāṇa lays it down that the face of a person who had sold his daughter in marriage should not be seen.^{4.} The custom of bride-purchase is also known in Pāli literature, for instance in the Dhammapada.^{5.}

It seems that Gāndharva marriage was also widely practised. The Mahābhārata includes it in the group of approved marriages. The passage runs, "When the father of the girl, disregarding his own wishes, bestows his daughter upon a person whom the daughter likes and who reciprocates the girl's sentiments, the form of marriage is.....is called Gāndharva by those that are conversant with the Vedas.....Of these five, (namely, the Brāhma, the Kshātra, the Gāndharva, the Āsura, and the Rākshasa), three are righteous.....and two are unrighteous."^{6.} The self choice which is an essential element of the Gāndharva marriage was probably borrowed by the Aryans from the Gāndharvas, who are said to have been an aboriginal race. The best known instance of this kind of marriage in the Mahābhārata is that of Dushyanta and Śakuntalā,^{7.} later on embodied in

3. Ibid., 1. 113. 4. Padma-Purāṇa, Brahmākhaṇḍa, 24, 26. 5. Dhammapada with commentary, Vol. 5. NBh. 13, 44. 7. Vaidya, Epic India, p. 94.

Kālidāsa's famous play.

The Svayamvarā form of marriage is depicted in the epics in all its splendours. This form of marriage was not, however, a universal custom, but was confined to daughters of Kshatriyas, or more particularly to royal princesses. The right to Svayamvarā was claimed by the Kshatriyas as a caste privilege. The Mahābhārata tells us that when several kings competed for the hand of Kuntī in marriage, her father held a Svayamvarā for her, and she chose Pāṇḍu by hanging a garland round his neck.⁸ Sharply contrasted with Kuntī's svayamvarā is the svayamvarā of Draupadī,⁹ which is interesting from more than one point of view. Though called svayamvarā, it probably belongs to an older type of marriage where there was no question of the girl's making a choice, but the decision was arrived at by the trial of strength of the wooers. In the case of Draupadī the decision was made by shooting at a target with the bow and arrow. Similarly, the Rāmāyana describes how Rāma won Sītā in svayamvarā by drawing the bow. It is written,

"This heavenly bow, exceeding bright,
These youths shall see, O Anchorite.

8. MBh., 1. 112.

9. Ibid., 1. 187.

Then if young Rāma's hand can string
The bow that baffled lord and king,
To him I give, as I have sworn,
My Sīta, not of woman born." 10.

It was not, however, imperative that a person who sought for a wife should himself show his prowess in the svayamvarā, this could be achieved by proxy as well. It is said that as Vichitravīrya was too young to take part in such a competition, Bhīshma took upon himself the task of finding a queen for him, and eventually he carried off by force at svayamvarā three daughters of the King of Kāshī, challenging all the assembled princes to wrest the girls from him if they could. 11.

It is also interesting to note that force was actually sometimes resorted to in order to reach a decision in a svayamvarā. A graphic picture of the fight, sometimes entailed in a svayamvarā, is found in the Mahābhārata: "About this time, O King, happened the self choice of the high-souled Devaka's daughter, in which all the Kshatriyas are present. In that self-choice, Cini, vanquishing all the kings quickly took up on his car the princess Devakī for the sake of Vāsudeva. Beholding the princess Devakī

10. Rāmāyana, l. 66

11. J.R.A.I., vol.XLVII(1917), p.33.

on Cini's car.....The brave Somadatta.....could not brook the sight. A battle, O king, ensued between the two which lasted for half a day.....Somadatta, was forcibly thrown down on the earth by Cini. Uplifting his sword and seizing him by the hair, Cini struck his foe with his foot, in the midst of many thousands of kings who stood as spectators all around. At last from compassion he let him off.....¹²"

In most of the instances of svayamvarā available, therefore, the self-choice, which is supposed to be the chief characteristic of this form of marriage, is peculiarly absent. Generally speaking it is often nearer to marriage by capture than free-choice on the part of the girl. However, the simplest and most beautiful form of svayamvarā is the instance of Sāvitṛī, who wandered about looking for a husband, though here, too, it should be noted that she did it at the instance of her father. It seems that though princesses had the privilege of choosing their husbands, it was nevertheless generally thought wise to leave the responsibility of the final selection of a husband to the father, and the daughters unhesitatingly submitted to the father's choice. It is evident that a girl's freedom to unite with a man chosen by herself was generally thought of as dreadful

and as such was feared as a state of things which would only come into being at the end of the Yuga. This fear is well expressed in the epic in the following passage: "No one will ask for a girl (for purposes of marriage) and no one will give away a girl (for such a purpose), but the girls will themselves choose their lords, when the end of the Yuga comes."^{13.}

Yet this feared independence of the girl is of the essence of the Gāndharva marriage which, as has been seen, was also an accepted form of marriage. Indeed, it has been said in connection with the marriage of Śakuntalā to Dushyanta, that this form of marriage celebrated without recital of mantras^{14.} was the best suited one for Kṣatriyas.

The Jātakas also throw a flood of light on the institution of marriage. Only three forms of marriage are found in these stories, namely, Gāndharva, Svayamvarā and the kind of marriage which is settled by negotiation between the parents of the bride and bridegroom. It seems, however, that the last mentioned form of marriage, that is, negotiated marriage, was the usual mode of marriage. It is also probable that the marriage was preferable which was confined to a particular caste and rank, that is to

13. Ibid., III, 190.

14. Ibid., I, 73.

say, it was thought desirable that the bride and bridegroom should belong to the same caste and rank. Evidently great importance was attached to preserving the purity of the family by contracting marriages between families of the same social standing. Thus, ^{15.} it is found in the Ananusociya Jātaka that the people who were entrusted with finding a bride for a Brāhmaṇa bridegroom, were asked to bring a Brāhmaṇa bride.

Again, everything connected with marriage was settled by the parents, and as such the bride and bridegroom had no control over their marriage. Indeed, ~~it~~ sometimes so happened that a promise was made in youth by the eldest members of the two families that if one of them had a boy and the other a girl, such a boy would be given in marriage to the ^{16.} girl.

There are, however, instances in the Jātakas [&] where grown-up girls were given the freedom to choose their own husbands. Thus it is told in the Kuṇāla Jātaka how the princess Kaphā chose the five sons of ^{17.} the King Pāṇḍu at her svayamvarā as her husbands.

15. Ananusociya Jātaka, III, p.93.

16. Sāmajātaka, VI, 71.

17. Kuṇāla-jātaka, V, p.426-427.

This is evidently a replica of the well-known svayamvarā and polyandry of Draupadī, who is also known as Kṛishnā in the Mahābhārata.

The Jātakas also indicate that the bride and bridegroom sometimes made their own choice after the fashion of the Gāndharva form of marriage. In such cases the parents had no knowledge of it. The couple did not conform to any rites or ceremonies. Thus the Kaṭṭhahāri Jātaka¹⁸ mentions a king, who became intimate with a girl whom he found singing in the garden. When the girl became enceinte the king gave her his signet ring telling her to rear up the child if it was a daughter, with the help of the ring; but to bring it to him if it was a boy. This again reminds one of the well-known Gāndharva marriage between Śakuntalā and Duśhyanta.

It seems that post puberty marriage prevailed in the epic period and the brides were, at the time of their marriage physically fit for consummation. Vaidya says, "It is stated that Draupadī was married formally by religious ceremonies to the five Pāṇḍavas on separate days and the poet records it as a miracle that she was a virgin each time.....This....shows that consummation of the marriage was a necessary part of the marriage ceremony and if that is so the bride was required to be of an age fit for consummation.

18. Kaṭṭhahārijātaka, I, p.134 ff.

The description of Draupadī at the time of the Svayamvara positively shows that she was then a grown-up girl. Kuntī had a son born to her before her marriage. Uttara was pregnant when her husband Abhimanyu died in the great....fight a few months after marriage. Subhadra, Abhimanyu's mother was a fully grown up woman at the time of her abduction by Arjuna¹⁹. However, the conversation of Sītā with Rāvana when he came to abduct her would lead one to suppose that she was only six years old at the time of her marriage, for she tells Rāvana,

"twelve winters with my lord I spent
Most happily with sweet content.....
As yet my days are few; eighteen
The years of life that I have seen"²⁰

On the other hand, it has been suggested that the marriages of Rāma and his brothers were consummated immediately after the marriage, that is to say, after the return of the marriage party to Ayodhyā. It is written,

"Due reverence paid to gods above,
Each princess gave her soul to love,
And hidden in her inmost bower
Passed with her lord each blissful hour"²¹

19. V.E.I. p. 88.

20. Rām, III, 47.

21. Ibid., I. 77.

Again, Sītā , in narrating the story of her marriage to Anasūyā describes the great anxiety of her father when she attained the proper age to be given in marriage:

"Then as he saw the seasons fly,
And knew my marriage-time was high,
My sire was vexed with care, as sad
As one who mourns the wealth he had:
'Scorn on the maiden's sire must wait
From men of high and low estate'"²²

Certain scholars have suggested that it was only among the Kshatriyas that girls were given in marriage

22. Ibid., II, 118; cf. Ind. Cul.vol.4 (July 1937-April 1938), p. 458.

at an advanced age, whereas the Brāhmanas, who principally observed the Brāhma form of marriage, married their daughters pre-puberty. If this is so, it is curious that not a single passage in the epics suggests that Brāhmanagirls are married at an early age.

Apart from the evidence of the epics, it, also, appears from the Jātakas that child marriage was unknown. At the age of sixteen a girl was thought of as grown up and fit to be given in marriage.²³ In the Amba Jātaka it is found that one of the four daughters of a merchant of Benares took the following oath before a false ascetic: -

"Let the maid that robbed thy tree, vainly for a husband sigh

Past her teens though she may be, and on thirty²⁴ verging nigh".

This, inter alia, shows that though it was the general custom that girls should be married at the age of sixteen or so, unusual circumstances sometimes forced them to remain unmarried beyond²⁵ this age. The age of the bridegroom is also given

23. Ananusociyajātaka, III, p.93; see also Ummadanti-jātaka, V, p. 210.

24. Ambacorajātaka, III, p.138-G.170.

25. Gaṇḍatindujātaka, V, pp.103-G.321.-104-G.324; cf. Mehta, Pre-Buddhist India, p.278.

26

as being sixteen, but the marriageable age for Brāhmaṇa and Khattiya young men and all others who had to undergo a course of studies was probably actually twenty or so. A bride equal in²⁷ age with her bridegroom was not unknown.

It is, however, interesting to note a departure in the Jātakas from the Brāhmaṇical injunctions in²⁸ respect of sister marriage. In the Udaya Jātaka, it is found that Prince Udaya married his own sister Princess Udaya-Bhaddā, who was, however, born of a different mother. This is a marked departure from earlier practice. That this form of marriage existed in society must be accepted. Anthropologically it would seem to be more primitive than the orthodox Brāhmaṇa marriage of the epics, and if this is so, it suggests that the Jātaka's portrayal of a social picture that is earlier than that of the epics. The Mahāvamsa, also, refers to sister marriage. It mentions that Sīhabāhu, King of Lālha, made his²⁹ sister, Sihasīvalī, his queen. However, Law says,

^T
26. Sūmajātaka, VI, p.72; see also Mahānāgga-jātaka, p. 363.

27. c.f. O.R. (Oct. 1931), p.110.

28. Udayajātaka, IV, p.105.

29. Mahāvamsa, p.60.

"It is difficult to say how far the Buddhist stories about the origin of some famous political communities by sister-marriage can be regarded as historical. Sister marriage was not in vogue in ancient India even in the earliest times of which we have any record, as the story of Yama and Yamī in the Rg-veda amply demonstrates. The idea was revolting to the Indians from the time of the Rg-veda downwards³⁰".

The marriage of cousins, on the other hand, seems to have been generally practised. The Jātakas mention it more than once. In the Mudupāṇi³¹ and Asilakkhaṇa Jātakas, it is said that a king gave his daughter in marriage to his sister's son (Bhāgineyyo).

Marriage in the epics as in the vedas continued to be recognised as a sacrament. It was performed in the presence of the sacred fire (Agni) and other gods and of venerable Brāhmaṇas. The husband and wife so married were regarded as one individual. As formerly, the presence of the wife was indispensable³² in all religious ceremonies.

It appears that polygamy was practised in the epic period. Nevertheless, there always was a

30. I.H.Q., vol.2, 1926,p.564.

31. Mudupāṇijātaka, II,p.327;Asilakkh- āṇajātaka,I, p. 457.

32. J.I.H., vol. XVII(1938),p.10.

marked tendency to monogamy. The prevalent social opinion of the time fostered in the mind of common people the desirability of being content with one wife. Dharma says, "Even in the polygamous age during which Rāma lived monogamy was highly esteemed. Ekapatnī-Vrata (monogamy) was considered as the ideal form of marriage. The blind ascetic who cursed Dasaratha, blessed his dying son and wished him to attain the regions obtained by people observing Ekapatnīvrata (monogamy). He could not think of any superior reward for his merit. Throughout the Rāmāyana, Rāma is praised for his monogamy. Rāma never married another wife even for the performance of a Yajña. He invariably substituted a golden image of Sītā in the wife's place when performing sacrifices, as the presence of the wife was absolutely necessary during the Asvamedha and other sacrifices. Rāma certainly³³ set the example of monogamy before his subjects".

Polyandry, though repugnant to the Indian mind, occurs in the Mahābhārata. The best known instance³⁴ is the marriage of Draupadī to the five Pāṇḍavas. It is probable that polyandrous marriage was practised in some section of society, and was not merely legendary. In the case of Draupadī, however, the

33. Ibid., vol. XVII, (1938), p.9.

34. J.R.A.S., 1897, p.735; see also Mayne, A Treatise on Hindu Law and Usage, pp. 64 and 65.

marriage seems to have been accidental and not premeditated. On the contrary, the fear of sin in such a union is evident in the utterance of Kuntī when she said, "..... from ignorance, O King, I said what was proper, namely. - Enjoy ye all what hath been obtained. O thou bull of the Kuru race, tell me how my speech may not become untrue; how sin may not touch the daughter of the King of Pāṇchāla, and how also she may not become uneasy!"³⁵ It is apparent that polyandry was not orthodox, for Drupada was surprised at the proposal of Yudhishtira that Draupadī would be the common wife of all the five brothers. The passage runs, "O scion of Kurus race, it hath been directed that one man may have many wives. But it hath never been heard that one woman may have many husbands! O son of Kuntī as thou art pure and acquainted with the rules of morality, it behoveth thee not to commit an act that is sinful and opposed both to usage and the vedas!"³⁶ It has been suggested that this practice was never a part or product of Aryan civilisation and that it occurs as a reflection from the culture of the non-Aryan peoples of India. That there was close association between the Aryans and non-Aryans is consistently borne out by the epics. However, Meyer goes further than that when he says, "It is a

35. M.Bh., 1, 193. 36. Ibid., 1, 197.

remarkable fact that the chief heroes of the Mahābhārata, the five brothers, have one wife or head-wife in common, Draupadī. Yet this is not so wonderful if we bear in mind the origin of the Pāṇḍavas. In very many places the epic shows with the utmost clearness that the Kauravas are the original heroes of the poem.....No less clearly does the present text also show us what unauthorised stranger intruders of a later date the Pāṇḍavas are.....To all seeming, the Pāṇḍavas were even of non-Aryan stock; and no one with an open mind can let himself think that they were cousins of the Kauravas, as the later revision would have us believe. Polyandry must be called non-Aryan...^{37.} and the five brothers, too, were certainly non-Aryan." This view of Meyer's is corroborated by Hopkins when he says, "for the history of the poem it is worth noticing that, though the Pāṇḍus are the present heroes, the stereotyped phrase is always of "praise^{38.} of the Kuru race", even where a Pāṇḍu is praised".

The Rāmāyana refers to a few instances of Satī. The wife of the blind ascetic who was shot by Dasaratha by mistake burnt herself on the funeral pyre with her husband. Again, the daughter of the royal sage Kusādhvaja, princess Vedavatī told Rāvana

37. S.L.A.E., Vol.I, p.p. 108-109

38. Hopkins, The Great Epic of India, p.366.

that after her father was killed by Dambu, her mother immolated herself on her husband's pyre. Moreover, the custom of Satī is also indicated in the determination of Kauśalyā to burn herself on the pyre of Daśaratha.³⁹ In most of these instances, the custom of Satī is confined to the families of kings and war-like nobles.

The self-immolation of Mādri, the wife of Pāṇḍu in the Mahābhārata, is outstandingly clear. It is written, "His (Pāṇḍu's) wife Mādri, beholding him placed in the funeral pyre and about to be consumed, herself ascended the same pyre, and sacrificing ^{her} life thus hath gone with her lord to the region reserved for chaste wives."⁴⁰

Despite these instances of Satī in the epics, it is noteworthy that Satī was not always performed, for it is recorded that after the carnage of Kurukshetra in which almost all of the princely families participated, no widow of a fallen Kuru warrior immolated herself. On the contrary, it is mentioned that the widows of the dead warriors performed śraddha ceremonies, after the cremation of the dead bodies. The passage runs, "The Kuru ladies, crying and afflicted with great grief, offered oblations of water unto their sires and grandsons and brothers

39. J.I.H., vol. XVII (1938) p.28

40. M.Bh., I, 126.

and kinsmen and sons and reverend seniors and husbands....while those wives of heroes were performing this rite in honour of their lords, the access^{41.} to the stream became easy.....

In the epic period as at all times in India married women considered widowhood as the greatest possible misfortune. However, the appropriation of^{42.} Tārā, Vāli's wife, by her husband's brother Sugrīva seems to represent merely the custom of the re-marriage of widows in a non-Aryan society, and as such this instance from the Rāmāyana does not reflect the attitude of Aryan society in this regard. On the other hand, the Mahābhārata clearly shows that it was a common custom that a woman after the death of her husband, should marry her husband's brother. It is written, "As a woman, in the absence of her husband, accepts his younger brother for him, even so the Earth, in consequence of the refusal of the Brāhmaṇa, has accepted his next born, namely, the^{43.} Kshatriya, for her lord."

Similarly, in the Jātakas the dreaded state of widowhood has been faithfully portrayed by the piteous words of Maddi who says,

"For terrible is widowhood,...The meanest

41. Ibid., XI, 27.

42. Rām., IV, 31.

43. M.Bh., XII, 72

harries her about
Knocked down and smothered in the dust, held
roughly by the hair,
A man do her any hurt, all simply stand and stare.
Even in a prosperous household, bright with silver
without end,
Unkindly speeches never cease from brother or from
friend,
Naked are rivers waterless, a kingdom without a king,
A widow may have brothers ten, yet is a naked thing.
A banner is the chariot's mark, a fire by smoke is
known,
Kingdoms by kings, a wedded wife by husband of her
own,
The wife who shares her husband's lot, be it rich,
or be it poor,
Her fame the very gods do praise, in trouble she
is sure." 44.

Therefore, it is not surprising that the Jātakas
bear testimony to the custom of the remarriage
of the widows, for instance, as narrated in the
Kunālajātaka.

The Mahābhārata contains a mass of evidence
concerning the custom of Niyoga, demonstrating that
this custom was not only very widely practised, but
also was very popular. Pāṇdu could not beget a child
of his own on account of the curse of a deer whom he
shot. So he exhorts his wife Kuntī to see to it
that she bears him a son by some other man. He says,
"O Kuntī,
being destitute myself of the power of procreation,
I command thee to raise good offspring through
some person that is either equal or superior to me!

O Kuntī, listen to the history of the daughter of Caradandayana who was appointed by her lord to raise offspring! That warrior-dame, when her monthly season arrived, bathed duly and in the night went out and waited on a spot where four roads met. She did not wait long when a Brāhmana crowned with ascetic success came there. The daughter of Caradandayana solicited him for offspring. After pouring libations of clarified butter on the fire (in the performance of the sacrifice known by the name of Pumsavana) she brought forth three sons that were mighty car-warriors and of whom Darjaya was the eldest, begotten upon her by that Brāhmana.....do thou follow that warrior-dame's example at my command, and speedily raise offspring out of the seed of some Brāhmana of high ascetic merit.⁴⁵ Again, when King Vichitravīrya died childless, Bhīshma said, "Listen..... to me as I indicate the means by which the Bharata line may be perpetuated! Let an accomplished Brāhmana be invited by an offer of wealth, and let him raise offspring upon the wives of Vichitravīrya."⁴⁶ This last instance of Niyoga is important for in this case sons are not only begotten on a woman whose husband is dead, but the person appointed is paid for his good office.

The Niyoga in the narrower sense of the levirate

is represented by the well-known case of Pāṇḍu and Dhṛitarāshtra. In the story it is mentioned that when Vichitravīrya died childless, his mother Satyawati came to her stepson, Bhīshma to request from him to beget sons on the two wives of Vichitravīrya. Bhīshma realised the necessity, but declined on account of his vow of celibacy. But Vyāsa, another son of Satyawati, begot Dhṛitarāshtra and Pāṇḍu on the two wives of the deceased Vichitravīrya.⁴⁷

It is, however, interesting to note that in most of the cases of Niyoga mentioned, the service of a Brāhman is requisitioned. Thus Meyer points out that it is nearly always the Brāhmanas who are used as "stud-bulls". Indeed, it is true that in later times in India, as elsewhere, the priest is named as the lawful instrument in begetting sons. Indian literature bears plentiful witness to the belief that the sons begotten by an ascetic are of special excellence.⁴⁸

It is, however, noteworthy that recourse to Niyoga often amounted to remarriage in certain circumstances. It seems that the general custom was to beget only three sons by Niyoga. The Mahābhārata records a passage which runs, thus, "The celebrated Pāṇḍu, tempted by the desire of having more children

47. Ibid., I, 106.

48. S.L.A.I. Vol.I, pp.169-171

wished to speak again unto his wedded wife..... But Kuntī addressed him, saying,—"The wise do not sanction a fourth delivery even in a season of distress. The woman having intercourse with four different men is called a Svairinī....., while she having intercourse with five becometh a harlot?" But is probable that more children could be raised by Niyoga, if daughters intervened and there were not successive sons. It was regarded by the Kshatriyas as very important that one should have a large number of sons, and in earlier times there was probably no limit to the number of offspring raised by Niyoga.

As has been seen the custom of Niyoga was common in ancient India. The crusade against it was led by Āpastamba, Baudhāyana and Manu, though it was still supported by some of the Dharmasūtra writers such as Vasishṭha and Gautama . However, the orthodox reaction against Niyoga became stronger and stronger as time went on. It is only natural that such a custom should be looked upon with disfavour, if not contempt, and should be characterised as primitive and uncivilised, in view of the fact that the strict religious morality of the law books was gaining the upperhand in Indian society and a finer sense of the marriage ideal and the conception of conjugal fidelity were developing. Even an adopted son, it was felt, 49. M. Bh. I. 123. 49a. For these various views see chapters 2 and 4.

should only take the pace of a natural son, in extreme instances. The institution of adoption is a legal fiction; but nevertheless, it is preferred to Niyoga, as it does not transgress the canons of morality. Moreover, Niyoga might have been thought to be detrimental to the purity of the family, especially from the point of view of the legal mechanics of inheritance.

The caste system, as reflected in the epics, was an accepted form of society. It has been seen that the origins of the caste system are to be found in the Rigveda, though in the shape of a differentiation of occupation only. But it has in the epic period appreciably developed, though not yet to the extent of creating impenetrable barriers with the effect of entirely prohibiting mutual marriage relations, throughout Indian society. Indeed, such intercaste marriages would in the epics bring about religious and legal disqualifications. The Mahābhārata says, "That Brāhmaṇa who, having married a Sūdra girl, besides for twelve continuous years in a village which has only a well for its water supply, becomes a sūdra in act."⁵⁰ Vaidya says, "They were all Aryans still and married daughters among themselves indiscriminately. The son of a priest, however, was

a priest and of a warrior^{a warrior}. That was the first development of caste achieved.....not without a hard struggle. A fight between Vasishtha and Vishvāmitra described in the vedas and in the Rāmāyana, as well as in the Mahābhārata, represents a struggle between the priest and the warrior with regard to the tendency to restrict occupations to particular classes. It was a revolt by the Kshatriyas against the rising dogma that the son of a Brāhmaṇa could alone perform priestly duties....The position then at this time was as follows: There were the fair skinned Aryans divided into three classes who had no objection to marry indiscriminately among themselves. The son of a Brāhmaṇa was, however, a Brāhmaṇa though he might be born of a Brahmana or a Kshatriya or a Vaiśya wife. There was a fourth class below them composed of the Dāsas or aborigines with whom the Aryans were naturally averse to form any marriage relations.⁵¹"

Though at this period women had ceased to participate in the sacrifices, their position in society probably remained a high one. It is true that the Mahābhārata says, "None of these, namely, a maiden, a youthful woman, a person unacquainted with mantras... is competent to pour libations on the sacrificial

52." But side by side with this embargo, the great epic also teaches what should be the moral attitude of men towards their women. It is written, "Respect, kind treatment and everything else that is agreeable, should be given unto the maiden whose hand is taken in marriage. Her sire and brothers and father-in-law and husband's brothers should show her every respect...

Women should always be worshipped and treated with affection." This high position assigned to women has been ^{expressed} in the epics expressed time and time again.

The following passage in the Mahābhārata clearly describes the importance of a wife in domestic life:

"Separated from her, my home appears to me empty!

A householder's home, even if filled with sons and grandsons and daughters-in-law and servants, is regarded empty if destitute of the housewife. One's house is not one's home, one's wife only is one's home. A house without the wife is as desolate as the wilderness.....It is said that the wife is the richest possession of her lord. In this world the wife is the only associate of her lord in all the concerns of life..

54. There is no refuge better than the wife." It is, therefore, plain that the identification of the wife with home mentioned in the vedic literature is carried on in the epics.

52. M.Bh. XII, 166.

53. Ibid., XIII, 46

54. Ibid., XII, 144.

CHAPTER IV.

KAUTILYA, MANU, YAJÑAVALKYA AND OTHERS.

Kautilya's Arthasāstra defines the forms of marriage thus: "The giving in marriage of a maiden well-adorned is called Brāhma-marriage. The joint performance of sacred duties (by a man and a woman) is known as Prajāpatya marriage. (The giving in marriage of a maiden) for a couple of cows is called Ārsha. (The giving in marriage of a maiden) to an officiating priest in a sacrifice is called Daiva. The voluntary union of a maiden with her lover is called Gāndharva. Giving a maiden after receiving plenty of wealth (Śulka) is termed Āsura. The abduction of a maiden is called Rākshasa. The abduction of a maiden while she is asleep and intoxicated is called Paisācha marriage¹". Kautilya says that of these forms of marriage, the first four are ancient ancestral customs and they are valid when they are approved by the father. The other forms necessitate the sanction of both the parents. Paisācha marriage is for the first time so termed and explicitly mentioned in the Arthasāstra. Scholars have tried to account for the

1. Arthasāstra, Bk.3, chapt. 2. p. 186.

name of this form of marriage. It has sometimes been suggested that this form of marriage was prevalent in the Pisācha country, whence it derived its name, or it might as well be a creation of the lawyers, Kautilya has, however, made this form of marriage punishable. He also forced the violator to marry the girl and pay *sulka* to the parents of the girl.

Manu also mentions the traditional eight forms of marriage, but he unlike Kautilya, distinguishes the forms of marriage according to their appropriateness for different classes of persons. In other words, Manu discusses marriage with a highly developed caste-system in view. He says, " (They are) (that is, the forms of marriage) the rite of a Brāhmaṇ (Brāhma), that of the gods (Daiva), that of the Rishis (Ārsha), that of Prajāpati (Prajāpatya), that of the Asuras (Āsura), that of the Gandharvas (Gāndharva), that of the Rākshasas (Rākshasa), and that of the Pisākas (Paisāka) One may know that the first six according to the order (followed above) are lawful for a Brāhmaṇa, the four last for a Kshatriya, and the same four, excepting the Rākshasa rite, for a Vaisya and a Sūdra. The sages state that the first four are approved (in the case) of a Brāhmaṇa, one, the Rākshasa (rite) in the case of a Kshatriya, four, the

Rākshasa (rite in the case) of a Kshatriya, and the Āsura (marriage in that) of a Vaisya and of a Sūdra. But in those (Institutes of the sacred law) three of the five (last) are declared to be lawful and two unlawful; the Paisāka and the Āsura (rites) must never be used. For Kshatriyas those before-mentioned two rites, the Gāndharva and the Rākshasa, whether separate or mixed, are permitted by the sacred tradition. The gift of a daughter, after decking her (with costly garments) and honouring (her by presents of jewels), to a man learned in the Veda and of good conduct, whom (the father) himself invites, is called the Brāhma rite. The gift of a daughter who has been decked with ornaments, to a priest who duly officiates at a sacrifice, during the course of its performance, they call the Daiva rite. When (the father) gives away his daughter according to the rule, after receiving from the bridegroom, for (the fulfilment of) the sacred law, a cow and a bull or two pairs (of kine), that is named the Ārsha rite. The gift of a daughter (by her father) after he has addressed (the couple), with the text, "May both of you perform together your duties", and has shown honour (to the bridegroom), is called in the Smṛiti the Prajāpatya rite. When (the bridegroom) receives a maiden, after having given as

much wealth as he can afford, to the kinsmen and to the bride herself, according to his own will, that is called the Āsura rite. The voluntary union of a maiden and her lover, one must know (to be) the Gāndharva rite, which springs from desire and has sexual intercourse for its purpose. The forcible abduction of a maiden from her home, while she cries out and weeps, after (her kinsmen) have been slain or wounded and (their houses) broken open, is called the Rākshasa rite. When (a man) by stealth seduces a girl who is sleeping, intoxicated, or disordered in intellect, that is the eighth, the most base and sinful rite of the Pisākas.²

Yajñavalkya also mentions the same forms of marriage and his attitude to them is substantially the same. He says, "That is called Brāhma marriage (wherein the bridegroom) being invited, (the bride) is given away, bedecked according to the (givers) means. (Giving away the bride) to the Ritviṣṭa sitting at a sacrifice (makes) a daiva (marriage); (giving the bride) after taking a cow, and a bullock (makes) an ārsha (marriage)..... Giving the bride after telling the bridegroom 'may she fulfil with you the duties of religion', makes a Kāya (called also Prajāpatya by Viṣṇanesvara) marriage The Āsura is (that marriage which takes place) on the

acceptance of money; the Gāndharva is that which occurs in consequence of each other's (love) (that is to say, 'one made by each other's consent without the intervention of a third party'); Rākshasa (is that where the bride) is taken away in war; (and) Paisācha³ is that where deceit is practised on the bride".

It is interesting to note here that Yajñavalkya does not mention which form of marriage is applicable to the four castes. It is, however, clear that Paisācha marriage is, in his opinion, the lowest form of marriage since he mentions it last of all.

Nārada describes the forms of marriage in a similar way, "In the Brāhma form, a maiden decked with ornaments is given (to the bridegroom), after he has been invited and honourably received (by the father). When he has been addressed with the words, 'Fulfil your sacred duties together (with her)'; it is termed the Prajāpatya form. When (the father) receives (from the bridegroom) a dress and a bull and a cow, it is termed the Ārsha form. When she is given before the altar, to a priest, who officiates at a sacrifice, it is termed the Daiva form. The union of a willing maiden with her lover is the fifth form, termed Gāndharva. When a price is (asked for the bride by the father and taken by him), it is the form termed Āsura. The Rākshasa form is declared to consist of

3. Yajñavalkya, 1, 58-61.

the forcible abduction of a maiden. Sexual intercourse with a woman during her sleep or while she is unconscious (of the approach of a man) constitutes the eighth form, the basest of all".⁴

It is, therefore, plain that the later writers have followed Kauṭilya very closely. The Arthasāstra is the first work in which the matter is held legally. Manu's insistence on caste practices, therefore, must be accepted as a reflection of the social opinion of his day.

In the opinion of Kauṭilya, "Women, when twelve years old, attain majority (prāptavyavahārā) and men when sixteen years old".⁵ This, then was probably the marriageable age for the bride and bridegroom at the time. Kauṭilya does not mention in the Arthasāstra any required disparity in the ages of the bride and bridegroom. Manu, on the other hand, says, "A man, aged thirty years, shall marry a maiden of twelve who pleases him, or a man of twenty four, a girl eight years of age; if (the performance of) his duties would (otherwise) be impeded, (he must marry) sooner."⁶

4. Nārada, 12, 40-44.

5. AS., Bk. 3, chapt. 3, p.190.

6. M., IX. 94.

From this it is ⁷ guessed that in Mauryan times to which the Arthasāstra indisputedly belongs ~~the marriageable age of girls was twelve~~. It seems likely that the marriage age for men was sixteen, though it is by no means clear from the above passage.

The self-choice of women is also found in Manu, in spite of the conservative character of the work. Freedom to choose a husband is, however, only permitted to the girl conditionally, that is to say, when for one reason or another a girl has been left unmarried beyond the usual time. Manu postulates, "Three years let a damsel wait, though she be marriageable; but after that time let her choose for herself a bridegroom (of equal (caste and rank). If, being not given in marriage, she herself seeks a husband, she incurs no guilt, nor ⁸ (does) he whom she weds". It is, however, interesting to note that this freedom of choice though accorded to women by Manu, was not altogether approved by him, for unfavourable legal consequences follow from the exercise of this right. Manu says, " A maiden who

7. Smith, The Early History of India, p.144;cf.

Raychaudhuri, Political History of Ancient India, p. 226.

8. M., IX, 90-91.

choses for herself, shall not take with her any ornaments, given by her father or her mother, or her brothers; if she carries them away, it will be theft"⁹. At the same time it is noteworthy that the father of the girl also lost his dominion over the daughter as the result of his failure to give her in marriage at the proper time, and as a consequence thereof the husband of the girl would not be required¹⁰ to pay any nuptial fee to her father.

Yajñavalkya, however, removes Manu's condition according to which a girl had to wait for three years after the marriageable age before she could select a husband for herself. He says, "(He who being qualified to give) does not give her (in marriage), incurs (the sin of) infant-killing at each menstrual period. If there be no giver, the maiden is herself to select¹¹ a (suitable) bridegroom". It seems that Yajñavalkya with Kautilya and Manu before him is here bringing to bear on the matter practical experience of legal cases.

Concerning the remarriage of males. Kautilya says, "If a woman either brings forth no (live) children, or has no male issue, or is barren, her husband shall wait for eight years (before marrying another). If she

9. Ibid., IX, 92.

10. Ibid., IX, 93.

11. Yaj., I, 64.

bears only a dead child, he has to wait for ten years. If she brings forth only females, he has to wait for twelve years¹²". Manu also substantially lays down the same rules, closely following those of Kauṭilya, with slight modifications. He says, "A barren wife may be superseded in the eighth year, she whose children (all) die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay¹³". Manu goes on to say, "She who drinks spirituous liquor, is of bad conduct, rebellious, diseased, mischievous, or wasteful, may at any time be superseded¹⁴ (by another wife)."

In spite of Kauṭilya's elaborate rules concerning polygamous unions, the idealistic view of contemporary Indian society has been stressed in definite penal clauses obstructing polygamous unions and thereby maintaining the idea of the desirability of being content with one wife at a time, that is to say, monogamy. In case of the violation of the rules, Arthasāstra lays it down, "he (that is one who marries another wife) shall be made to pay her not only sūlka, her property (strīdhana) and an adequate monetary compensation (ādhivedanikamartham), but also a fine of 24 panas to

12. AS., Bk. 3, chapt. 2. p. 189.

13. M., IX, 81.

14. Ibid., IX, 80.

the government. Having given the necessary amount of *sulka* and property (*strīdhana*) even to those women who have not received such things on the occasion of their marriage with him, and also having given his wives the proportionate compensation and an adequate subsistence (*vr̥tti*), he may marry any number of women¹⁵.

A corresponding penal clause is found also in *Yajñavalkya*. He slightly modifies the *Arthasāstra* and lays it down that, "To a superseded wife, (the husband) should give a sum equal (to the expenses of the marriage) by which she has been superseded, provided no *strīdhana* (woman's property) had been bestowed on her; but if (any has been) assigned, *ardham* (half) (only) should be allotted"¹⁶.

Kauṭilya says of the remarriage of the women, "Wives who belong to the *Sūdra*, *Vaiśya*, *Kshatriya* or *Brāhmaṇa* castes, and who have not given birth to children, should wait as long as one, two, three and four years respectively for their husbands who have gone abroad for a short time; but if they are such as have given birth to children, they should wait for their absent husbands for more than a year. If they are provided

14. *Id.*, 14, 30.

15. *As.*, Bk. 3. chapt. 2, p. 189.

16. *Yaj.*, 2, 148.

with maintenance, they should wait for twice the period of time mentioned. If they are not so provided for, their well-to-do gñātis should allow them to marry, after taking what had been presented to them on the occasion of their marriages. If the husband is a Brāhmaṇ, studying abroad, his wife who has no issue should wait for him for ten years; but if she has given birth to children, she should wait for twelve years. If the husband is a servant of the king, his wife should wait for him till her death; but if she bears children to a Savarna husband, (that is, a second husband belonging to the same gotra as that of the former husband) with a view to avoid the extinction of her race, she shall not be liable to contempt thereof (savarnatascha prajātā nā' pavādam labheta). If the wife of an absent husband lacks maintenance and is deserted by her well-to-do gñātis, she may re-marry one whom she likes and who is in a position to maintain her and relieve her misery. A young wife (kumārī) who is wedded in accordance with the customs of the first four kinds of marriage (dharmavivāhāt), and whose husband has gone abroad and is heard of shall wait for him for the period of seven menses (saptatīrthānyākāṅksheta), provided he has not announced his departure; but she shall wait for him a year in case of his having announced the same. In

the case of a husband who is gone abroad but who is not heard of, his wife shall wait for the period of five menses, but if the absent husband is not heard of, his wife shall wait for him for the period of ten menses.

In the case of a husband who is gone abroad and is not heard of, his wife shall, if she has received only part of *sulka* from him, wait for him for the period of three menses; but if he is heard of, she shall wait for him for the period of seven menses. A young wife who has received the whole amount of *sulka* shall wait for the period of five menses for her absent husband who is not heard of; but if he is heard of, she shall wait for him for the period of ten menses. Then with the permission of judges (*dharmasthairvisr̥shā*), she may marry one whom she likes.¹⁷

These elaborate rules of Kaṭilya make it plain that the remarriage of a woman was allowed merely on the presumption of her husband's death. Moreover, it seems that the provision for her maintenance plays an important part in matters of her waiting for the absent husband. It has already been noticed that she is required to wait a longer period for the absent husband if she has been provided for. It is, therefore, probable that her material welfare has been considered more important than the sacramental idea of sticking to the first marriage. It is evident that in the Arthasāstra marriage is viewed

from the legal and materialistic standpoints, shorn, to some extent, of religious sentiments which figure so prominently in the works of Manu and Yajñavalkya.

Kauṭilya further lays down the laws as to the persons whom such deserted women should marry. He says, "In the case of husbands who have long gone abroad, (dīghapravāsinah), who have become ascetics, or who died, their wives, having no issue, shall wait for them for the period of seven menses; but if they have given birth to children, they shall wait for a year. Then (each of these women) may marry the brother of her husband. If there are a number of brothers to her lost husband, she shall marry such a one of them as is next in age to her former husband, or as is virtuous and is capable of protecting her, or one who is the youngest and unmarried. If there are no brothers to her lost husband, she may marry one who belongs to the same gotra as her husband's or a relative, that is, of the same family. But if there are many such persons as can be selected in marriage, she shall choose that one who is the nearer relation of her lost husband.¹⁸" This passage makes it clear that the custom of marrying the husband's brother was, indeed, an established fact in Mauryan times.

Manu says, "If the husband went abroad for some sacred duty (she) (the wife) must wait for him eight years,

18. Ibid., Bk.3. Chapt.4, p.196

if (he went) to (acquire) learning or fame six (years),
19.
if (he went) for pleasure three years." But this passage
is obscure and does not convey any definite sense. It
seems that Jayaswal is right when he explains the above
passage thus: "The Mānava does not say what she should
do after the waiting period, and this gives rise to
difference of opinion among the commentators. Nandana
gives the correct meaning that a remarriage was allowed,
but Medhātithi, though he knows this interpretation by
his predecessors, disallows a remarriage even in face of
the direct permission by Nārada and Parāśara. Other
commentators, according to the view of their time, say
that after the period of waiting she should go out to
20.
search for the husband."

Yajñavalkya has, also, boldly laid down rules regard-
ing the wife's duty on the disappearance of the husband,
and these are easily distinguishable from the rules enacted
by Kauṭilya or Manu. He says, "Keeping the household
furniture, attentive, cheerful, opposed to expense, devoted
to the husband, (the wife) is to venerate the feet of her
father-in-law and mother-in-law. She, whose husband is
gone abroad, should leave off playing (with balls, etc.)
adorning the body (with scents, etc.) seeing assemblages
of men and festivals, laughter, going to the houses of
strangers. The father is to protect the maiden (before her
marriage); the married woman is to be protected by the

19. M., IX, 76.

20. Jayaswal, Manu and Yajñavalkya, p.229; Buhlers note
on Manu, IX, 76 in S.B.E. vol. 25

husband, and in old age (in his absence) by sons, or in their absence by kinsmen; because women are never to have independence.^{21.} She who is bereft of her husband, is not to be without (the protection of) the father, mother, sons, brothers, mother-in-law, father-in-law, mother's brothers;^{22.} otherwise she will incur reproach. She who is intent upon what would be pleasing to the husband, whose conduct is praiseworthy, and who has subdued her senses, attains to glory in this world, and the blessed state after death.^{23.} It is remarkable that in the laws of Yajñavalkya a wife is expected to remain loyal to her husband, and lead a virtuous life, with no mention of possible divorce or remarriage even after his disappearance. Nor is there, as in the laws of Manu, any ground for inferences with regard to divorce or remarriage. Yajñavalkya has, however, followed Manu when he says, "She who whether her husband be alive or dead, does not approach another, attains glory here, and rejoices with Umā (hereafter)."^{24.} But at the same time he does prescribe for the remarriage of widowers. His words are explicit: "The husband having burnt his well-conducted wife with the

21. cf. M, IX, 3.

22. cf. Ibid., IX, 2.

23. Yaj., I, 83-87.

24. Ibid., I, 75.

Agnihotra fire, should without delay take another wife,
and (kindle) another fire.^{25.}"

Vātsyāyana in his Kāmasūtra deals in some detail the position of women in regard to remarriage. It is, however, noteworthy that the position of a remarried woman, as she is depicted in the Kāmasūtra, is nearer to that of a mistress than that of a really wedded wife, inasmuch as such women could not participate with their husbands in religious observances. Chakladar says, "The position of a widow who wished for a second husband, has been clearly defined by Vātsyāyana. There was no regular marriage for a widow; but if a woman who had lost her husband, was of weak character and was unable to restrain her desires, she might ally herself for a second time to a man who was a seeker of pleasures (Bhogin) and was desirable on account of his excellent qualities as a lover, and such a woman was called a punarbhū.....The connection with her (lover) was of a loose character and she enjoyed a degree of independence unknown to the wife wedded according to sacramental rites.^{26.}"

Nārada, however, allows the second marriage of a woman whose husband is lost or dead as well as in other

25. Ibid., I. 89.

26. Chakladar, "Sidelights on Social Life in Ancient India", Mookerjee Silver Jubilee volumes, vol.3, Orientalia - Part I, p.362-363.

circumstances. He says, " When her husband is lost or dead, when he has become a religious ascetic, when he is impotent, and when he has been expelled from caste: these are the five cases of legal necessity, in which a woman may be justified in taking another husband. Eight years shall a Brāhmaṇ woman wait for the return of her absent husband; or four years, if she has no issue; after that time, she may betake herself to another man. A Kshatriya woman shall wait six years; or three years, if she has no issue; a Vaiśya woman shall wait four (years), if she has issue; any other Vaiśya woman (that is, one who has no issue), two years. (However,) no such (definite) period is prescribed for a Sūdra woman, whose husband is gone on a journey. (However,) twice the above period is ordained, when the (absent) husband is alive and tidings are received of him.^{27.}" No indication is given as to whom such women should marry.

It has already been noticed that the Arthasāstra states that when a woman or a widow marries for the second time under various circumstances, the preference should always be given to the brother of the first husband. Therefore, it is evident that such a rule clearly indicates the strong desire to keep the woman concerned in the family of the first husband by excluding the possibility of her remarriage to a stranger.

Manu closely follows the Arthasāstra in this regard

when he says, "If the (future) husband of a maiden dies after troth verbally plighted, her brother-in-law shall wed her according to the following rule. Having, according to the rule, espoused her (who must be) clad in white garments and be intent on purity, he shall approach her once in each proper season until issue (be had)"^{28.}.

It is, however, interesting to note that though Manu follows here Kautilya he differs substantially from the latter and, indeed, modifies the Kautilyan law on this point so far as he definitely says that the conjugal relationship of the widow and her brother-in-law should be kept within certain bounds. Moreover, it appears probable that Manu wanted to make it incumbent on the widow to marry her husband's brother. This was not so in the Arthasāstra. In Kautilya, however, marriage was a contract which was easily dissoluble, whereas the entire laws of Manu on the subject are centred on the indissolubility and sacramental view of marriage.

It is evident from the Arthasāstra that recourse to Niyoga, in the absence of sons in normal way, was an established practice, but there was a difference of opinion as to who, whether the husband of the mother or the natural father, should be the legal father of the child raised by Niyoga. Kautilya who, accepts the custom of Niyoga as absolutely lawful also expresses his own view concerning it. He says, "My preceptor says that the

seed sown in the field of another shall belong to the owner of that field. Others hold that the mother, being only the receptacle for the seed (mātā bhastrā), the child must belong to him from whose seed it is born. Kautilya says that it must belong to both the living^{29.} parents." Therefore, it is clear that the child so raised belonged in Kautilya's opinion to both the seed-giver and the mother, thereby excluding the legal husband of the mother. It is, however, a fact that Kautilya, in spite of this view as to the ownership of the child, also says that the child raised by Niyoga became the heir to both the natural and the legal father, because the legal father has a claim on the child on account of the relationship between him and the mother of the child. The Arthasastra says, "The son begotten on a wife by another man, appointed for the purpose, of the same gotra as that of the husband, or of a different gotra, is called Kshetraja; on the death of the begetter, the Kshetraja son will be the son to both the fathers, follow the gotras of both, offer funeral libations to both, and take^{30.} possession of the property (riktha) of both of them."

The underlying idea behind the ancient but lax practice of Niyoga was probably that any obstacle which might stand in the way of motherhood was a transgression

29. AŚ., Bk.3, Chapt.7, p.201-202.

30. Ibid., Bk.3, Chapt.7, p.202.

of law.

It has already been seen that a crusade was waged by some ancient lawyers, more particularly by Āpastamba, against this established custom of Niyoga, though its antiquity was admitted. Manu condemned it in clear and emphatic language and all its consequences. In this respect, the laws of Manu on the subject of marriage are a direct attack on the laws laid down by Kauṭilya. It has been pointed out that in the Arthasāstra the desirability of the custom of Niyoga is not questioned, but it was more concerned to determine the ownership of the child so raised. However, Manu discourses this custom in details, but in the end he forbids one from observing it. He says, "By the sacred tradition the woman is declared to be the soil, the man is declared to be the seed; the production of all corporeal beings (takes place) through the union of the soil with the seed. In some cases the seed is more distinguished, and in some the womb of the female; but when both are equal, the offspring is most highly esteemed." At the same time, it is interesting to note that Manu does not evade the issue of the ownership or priority of claims on the child raised by Niyoga, but he gives a definite solution which

30a. Kane, History of Dharmasāstra, vol.1, p.95 ff.

31. M., IX, 33-34.

is perhaps borrowed from his predecessor, Kauṭilya. Manu says, "On comparing the seed and the receptacle (of the seed), the seed is declared to be more important; for the offspring of all created beings is marked by the characteristics of the seed."³² Therefore, it is clear that Manu holds like Kauṭilya that the donor of the seed has the prior claim in comparison to all other persons concerned. The reasons that he puts forward for holding the opinion are: "Whatever (kind of) seed is sown in a field, prepared in due season, (a plant) of that same kind, marked with the peculiar qualities of the seed, springs up in it. This earth, indeed, is called the primeval womb of created beings; but the seed develops not in its development any properties of the womb. In this world seeds of different kinds, sown at the proper time in the land, even in one field, come forth (each) according to its kind. The rice (called) Vrihi and (that called) Sālī, Mudga-beans, Sesamum, Masha-beans, Barley, Leeks, and sugar-cane, (all) spring up according to their seed. That one (plant) should be sown and another be produced cannot happen; whatever seed is sown, (a plant of) that kind even comes forth. Never, therefore, must a prudent well-trained man, who knows the Veda and its Angas and desires long life, cohabit with another's wife."³³ It is, therefore, plain

32. Ibid., IX, 35.

33. Ibid., IX, 36-41.

that according to Manu the seed was all important, and as such the son born of Niyoga belonged to the begetter, and not to the putative father. He is insistent that no seed should be sown in another man's field, and he substantiates this by quoting the Purāṇa-author Vāyu: "As the arrow, shot by (a hunter) who afterwards hits a wounded (deer) in the wound (made by another), is shot in vain, even so the seed, sown on what belongs to another, is quickly lost (to the sower). (Sages) who know the past call this earth (prithivī) even the wife of Prithu; they declare a field to belong to him who cleared away the timber, and a deer to him who (first) wounded it.³⁴" It seems that here the legal difficulty of establishing the pregnancy due to Niyoga has been stressed upon. Though admittedly the seed-owner has prior claim, it is difficult for him to prove that he is the begetter of the child in view of the fact that the legal husband is also present whom the woman belongs to. Therefore, there is the possibility of the child being lost to the natural begetter. If, however, there should be a special contract for making over the woman to another man for begetting a child by her, then, of course, both the natural and legal father would have joint ownership on the child.³⁵ It seems, however, that all these discussions by Manu are merely

34. Ibid., IX, 43-44.

35. Ibid., IX, 53.

theoretical, because any making over of women to another for Niyoga is not allowed by him.

With regard to marriage in general Manu goes on to say, "He only is a perfect man who consists (of three persons united), his wife, himself, and his offspring; thus (says the veda), and (learned) Brāhmaṇas propound this (maxim) likewise, 'The husband is declared to be one with the wife'³⁶". It is, therefore, evident that the wife being a part of her husband's body, she cannot be released from wedlock. He continues, "Neither by sale nor by repudiation is a wife released from her husband; such we know the law³⁷ to be, which the Lord of creatures (Prajāpati) made of old." Here Manu seeks the authority of the primeval creator in order to found his theory on a strong basis. The above passages are of great significance because of the corollaries that follow from them. Evident deductions from the passages are that firstly, once a wife always a wife, and secondly, the union of the wife with a stranger is excluded as this is repugnant to the postulated eternal conjugal unity. In other words, the trinity of husband, wife and son excludes a stranger, and therefore, the ancient practice of Niyoga becomes illegal.

Finally, he says, "In the sacred tests which refer to marriage the appointment (of widows) (that is, the

36. Ibid., IX, 45.

37. Ibid., IX, 46.

appointment of Niyoga husbands) is nowhere mentioned, nor is the re-marriage of widows prescribed in the rules concerning marriage. This practice which is reprehended by the learned of the twice-born castes as fit for cattle is said (to have occurred) even among men, while Vena^{38.} ruled." Jayaswal has explained the idea underlying this passage in the following way;- why should the Mānava author go to the length of denying the fact of the ancient practice and call the practice 'a law for the cattle'? The answer is that Manu had to fight the law of the last regime on the dissolution of marriage. At every step he must say that marriage is indissoluble. He would not leave any loop-hole for the deduction that a woman may not lose an opportunity to become a mother. He would fill up the one breach afforded by ancient history, explaining away the texts, by pointing out that the mantras which create the marriage-tie not only do not sanction Niyoga, but do not mention it at all. As to history and literature there too Manu was alive to the difficulty. The literature is full of instances of Niyoga. This he met by confession and avoidance. There was in ancient time that rascally king, Vena, who did not follow the law and was therefore^{39.} deposed.

It is a matter of great interest that in spite of Manu's vehement opposition to the custom of Niyoga, the

38. Ibid., IX, 65-66.

39. J.M.Y. p.228

very same custom finds a place in the laws of Yajñavalkya. Though Yajñavalkya has frequently merely recorded the result of the conflict between Kautilya and Manu, here he has evidently followed the former. He says, "She who is again married.....is a Punarbhū; she who, leaving a husband, lusts after another man of the same class, is a Svairēṇī. To a sonless (widow) when in season, a younger brother of the husband or a sapinda or a sagotra, commanded by the Guru (preceptor) and desirous of raising a son should go.....He should go until conception takes place; otherwise he will become patita (or fallen); the son born in this manner is a Kshetrāja.⁴⁰"

Kautilya's laws concerning divorce introduced a remarkable school of thought which is a distinct departure from the traditional Indian view of marriage. It has already been seen that marriage was always regarded as a sacrament in contradistinction to a contract, and as such was indissoluble. Kautilya, however, regarded marriage as a contract and enacted elaborate laws particularly regarding divorce. He says, "A woman, hating her husband, cannot, dissolve her marriage with him against his will. Nor can a man dissolve his marriage with his wife against her will. But from mutual enmity, divorce may be obtained

40.Yaj., 1, 67-69.

(parasparam dveshānmokshah). If a man, apprehending danger from his wife, desires divorce (mokshamichchhet), he shall return to her whatever she was given (on the occasion of her marriage). If a woman, under the apprehension of danger from her husband, desires divorce she shall forfeit her claim to her property; marriages contracted in accordance with the customs of the first four kinds of marriages cannot be dissolved.^{41.} It is probable that the reason behind the exception which Kautilya has made to the first four kinds of marriages in the enactment of his elaborate divorce laws, is that the sacramental idea of marriage was too deep-rooted in the mind of the people to be easily removed. The first four kinds of marriages, that is to say, the orthodox Brāhma, Prajāpatya, Ārsha and Daivya forms were the common practice. He permits divorce only in the four unorthodox forms of marriage which were practised by people of low social status.

Manu, however, seems to fall back on the traditional sacramental view of marriage, when he says, "Let mutual fidelity continue until death", this may be considered as the summary of the highest law for husband and wife. Let man and woman, united in marriage, constantly exert themselves, that (they may not be)

41. AŚ., Bk. 3, chapt. 3, p. 191

disunited (and) may not violate their mutual fidelity." ^{42.}
Hence divorce was impossible. Manu, however, does
admit a kind of divorce, for he says, "Though (a man)
may have accepted a damsel in due form, he may abandon
(her if she be) blemished, diseased, or deflowered, and
(if she has been) given with fraud." ^{43.}

It is evident that the Arthasāstra attached great
importance to the *sulka* or bride-price, whereas Manu
attacks it as unlawful. According to Manu *Sulka* played
no part in the completion of the legal tie of marriage.
It was the recitation of the sacred texts only that
was important. Jayaswal has explained the meaning of
the term *Sulka* in the following way, "They (that is,
Brāhma and *Saulka* forms of marriage) mean 'priestly'
(*brāhma*) and 'contractual' (*saulka*). *Sulka* latterly
meant a 'tax', a 'fee', but in its original sense it
seems to have implied a condition. In the *Mahābhārata*
it is used to denote a prize or bet. Bhāsa employs it
in that sense in connection with the marriage between
Dāsāratha and Kaikeyī. Kaikeyī's *sulka* at the time of
her marriage was that her son was to succeed to the
throne. When it means a tax, it means the toll at the
gate of the city, the condition which must be fulfilled
before entry was permitted. The underlying idea seems
to be a condition, a conditional security or consider-
ation." ^{44.}

42. M., IX, 101-102.

43. Ibid., IX, 72.

44. J.M.Y. pp. 236-237

Manu in his condemnation goes so far as to say, "Nor indeed, have we heard, even in former creations, of such (a thing as) the covert sale of a daughter for a fixed price, called a nuptial fee."^{45.} That the *sūlka* paid had nothing to do with the essential legality of the marriage is clear from Manu when he says, "The nuptial texts are a certain proof (that a maiden has been made a lawful) wife; but the learned should know that they (and the marriage-ceremony) are complete with the seventh-step (of the bride around the sacred fire)"^{46.} It is, however, interesting to note that here Manu attaches equal importance to both the ceremonial part of the actual rite and recitation of the sacred verses.

The custom of *sūlka* in India is also corroborated in classical sources. Megasthenes says, "They marry many wives, whom they buy from their parents, giving in exchange a yoke of oxen."^{47.}

It seems from the *Arthasāstra* that *sulka* or bride-price was paid in all the forms of marriage. It is written, "It is they (that is, both the father and the mother) that receive the money *sūlka* paid by the bridegroom for their daughter. In case of the absence by death of either the father or the mother, the survivor

45. M., IX, 100.

46. Ibid., VIII, 227.

47. McCrindle, *Ancient India as described by Megasthenes and Arrian*, p.59; cf. B.C.Law volume, Part I, P.485.

47a. However, Manu says, "Nor indeed have we heard even in former creations of such (a thing as) the covert sale of a daughter for a fixed price, called a nuptial fee." M., IX, 100.

will receive the *sulka*. If both of them are dead, the maiden herself shall receive it.....Means of subsistence (*vr̥tti*) or jewellery (*ābadhya*) constitutes what is called the property of a woman. Means of subsistence valued at above two thousand shall be endowed (in her name). There is no limit to jewellery. It is no guilt for the wife to make use of this property in maintaining her son, her daughter-in-law, or herself, whenever her absent husband has made no provision for her maintenance. In calamities, disease and famine, in warding off dangers and in charitable acts, the husband, too, may make use of this property. Neither shall there be any complaint against the enjoyment of this property by mutual consent by a couple... Nor shall there be any complaint if this property has been enjoyed for three years by those who are wedded in accordance with the customs of the first four kinds of marriage. But the enjoyment of this property in the cases of *Gāndharva* and *Āsura* marriages shall be liable to be restored, together with interest on it. In the case of such marriages^{as} are called *Rākshasa* and *Paisācha*, the use^{48.} of this property shall be dealt with as theft." It is clear from the above passage that the rights of a wife over her property were limited. A wife could use such property for her own maintenance and for the maintenance of the household only in the absence of her husband and

48. AS., Bk. 3, Chapt. 2, pp. 186-187

when no proper provision had been made by the husband for her maintenance. On the contrary, the husband could also use this wife's property in certain circumstances seemingly without her consent. The husband's control over the strīdhana of his wife was, therefore, in practice more effective than the wife's.

Yajñavalkya, however, enumerates the wife's properties ^{when} he says, "What was given (to a woman) by the father, the mother, the husband, or a brother, or received (by her) at the nuptial fire, or presented (to her) on her supersession (adhyavahanika), and the like ^{49.} is denominated woman's property."

Kautilya has definitely provided for the inheritance of property by the daughters on the death of the father. He says, "If a man has no male issue, his own brothers, or persons who have been living with him (saha jīvivo vā), shall take possession of his property (dravyam); and in their absence his daughters (born of marriages other than the first four), shall have his property (riktham). If one has sons, they shall have the property; if one has (only) daughters born of such marriage as is contracted in accordance with the customs of any of the first ^{50.} four kinds of marriage, they shall have the property." In the case of a widow Arthasāstra is by no means so liberal. It lays down that a widow is entitled only to

49. Yaj., 2, 143.

50. AS., Bk. 3, chapt. 5, p. 197.

her maintenance. The passage, ^{✓ as has already been seen,} runs, "Means of subsistence (vṛtti) or Jewellery (ābadhya) constitutes what is called the property of a woman."^{51.}

^{52.} The list of heirs enumerated by Mamu, however, does not mention either a widow or a daughter as an heir at law.

It is, again, only in the laws laid down by Yajñavalkya that widows and daughters are mentioned as heirs. Moreover, wife and daughter had the list of heirs given by Yajñavalkya. He goes on to enumerate the heirs in the following way, "the wife, daughters, both parents, brothers, and likewise their sons, gotrajas (gentiles); Bandhus (cognatis); a pupil and a fellow student - of these, on failure of the preceding, the next following in order is heir to the estate of one who has departed for heaven, leaving no putra (son). This rule extends to all (males whether belonging or not to ^{53.} the four) classes." It is, however, noteworthy that the whole of the credit for allotting shares in the inheritance to women is not due to Yajñavalkya alone, for in Kautilya provision was already made for the inheritance for daughters. However, unlike Kautilya, he does not make any distinction between a wife and a daughter in matters of inheritance. A wife would inherit as much as a daughter

51. Ibid., Bk. 3, chapt. 2, p. 187.

52. M., IX, 185-187.

53. Yaj., II, 135-136.

Jayaswal has, however, accounted for this change in favour of women. He says, "The reason of the change in the policy of law towards women is two-fold; social and juridical. Buddhism had conquered the Hindu mind. Its influence on the Buddhists and non-Buddhists was alike in the matter of out-look towards men and women and their mutual rights. Buddhism had enfranchised women. The nun was an equal of the monk. The gates of the spiritual and religious rights were equally open to the despised women as to the self-styled god of the earth. Nuns' sisterhoods could and did hold property as much as the monks' brotherhoods. The conscience of the lawyers questioned, 'Why, should not women hold property at law?' Again we have seen that the new law took away all independence from the women in seeking a new alliance for herself and her support. What was she to do when her husband died? The lawyers who laid the life-long obligation on her to remain true to one man, must also think of prescribing some new rights in return. The conclusion to which Yajñavalkya came as a lawyer, was one from which there was no escape, considering the basic principle on which the Dharma lawyers founded their theory of indissolubility of the marriage-tie."

54.

Despite the fact that Kautilya's laws concerning

"women's property" were not altogether favourable to women, women certainly held a higher position at this time than they did in later periods. For instance, a wife was accorded the right to sue her husband for her maintenance. Kautilya, of course, says, "If she places herself under the protection of any one belonging to her father-in-law's family (śvaśurakula) or if she begins to live independently, then her husband shall not be sued^{55.} (for her maintenance.)" A woman could also sue for defamation. The Arthasāstra, of course, says, "women of refractive nature shall be taught manners by usinga bamboo or.....a rope or with the palm^{56.} of the hand.....on her hips....." Manu also lays down laws to the same end. He says, "A wife, a son, a slave, a pupil, and a (younger) brother of the full blood, who have committed faults may be beaten with a rope or a split bamboo, on the back part of the body, never on a noble part; he who strikes them otherwise^{57.} will incur the same guilt as a thief."

It seems, however, that the position assigned to women by Manu was not so high as that accorded in the Kautilyan laws, but it was certainly not so low as that of the age of Yajñavalkya. Jayaswal rightly summarises

55. AS. Bk., 3, chapt. 3, p. 190

56. Ibid., Bk. 3, chapt. 3, pp. 190-191

57. M., VIII, 299-300.

the position of women in the laws of Kauṭilya, Manu and Yajñavalkya when he says, "A great change is to be read in the provisions of Yajñavalkya where absolute obedience to the husband is laid down as the highest duty of the wife. It was not the wife of the time of Kauṭilya who would bring an action for defamation or assault and become a defendant in court for beating the husband. It was not the wife of the time of the Mānavas who regarded 'mutual fidelity' to be the highest duty. It was the wife of Yajñavalkya's age, permeated to the core, like pickle, with the new morals of Buddhism - with the 'dharma' of abject obedience and unnatural obedience and unnatural tolerance. The Hindu law books - The Dharmasāstras like Yajñavalkya - have bequeathed that wife, it seems, to all ages, undoubtedly to the great satisfaction of the Hindu husbands." 58.

In spite of the fact that the Aryans were averse to marrying a Sūdra, it seems that the marriage between a Sūdra woman and a member of the higher caste was practised. The Brāhmanas, it seems, actually married the dark complexioned Sūdra women, in face of the caste distinctions. It is interesting to note that when a Brāhmaṇa married a Sūdra woman he gave her his status and performed the religious rites in her company. Even Manu himself admits that a Sūdra-wife should be

accorded the status of her Brāhmaṇa husband. He says, "Akṣhamālā, a woman of the lowest birth, being united to Vasishṭha and Sārāṅgī, (being united) to Mandapāla, became worthy of honour. These and other females of low birth have attained eminence in this world by the respective good qualities of their husbands."^{59.}

60.

As has already been seen in the Arthasāstra there is not as yet any prohibition against a Sūdra marrying in any of the traditional forms of marriage, nor was there any particular form of marriage exclusively for Sūdras. On the other hand, the Arthasāstra recognises the offspring of a union between a Brāhmaṇa male and a Sūdra female, and gives him a share in the inheritance. It says, "of sons begotten by a Brāhmaṇ in the four castes, the son of a Brāhmaṇ woman shall take four shares; the son of a Kṣhātrīya woman three shares; the son of a Vaiśya woman two shares; and the son of a Sūdra woman one share."^{61.} But it seems that at the

same time such sons could not offer oblations to the pitris.^{62.} Therefore, it seems that the Sūdras had already become an integral part of Aryan society, many of them having Aryan blood in their veins. The fusion of the Aryans and non-Aryan was, therefore, far advanced when

59. M., IX, 23-24.

60. See supra.

61. AS., Bk. 3, chapt. 6, p. 201.

62. J.M.Y., p. 241.

the laws of Manu were enacted and ended the process. Manu carried the question of caste into every sphere of life, especially in the discussion of marriage. In Manu it is laid down for the first time that such and such marriages were appropriate only for such and such castes. Unlike the rule in the Arthasāstra which permits a Sūdra to marry according the vedic rite, Manu forbids all such marriages absolutely. It is, however, worth remembering that though Manu condemns a Brāhmana taking a Sūdra wife, he does not actually bring about any drastic change in this regard. He merely emphasises the growing tendency towards caste prejudices which at a later period, not too far off, created a vital social problem. Yajñavalkya took up the question of caste where Manu left it and completed it. He says, "The taking of a Sūdra-wife by the twice-born is (indeed) ordained (by some), (but) it is not agreeable to my views; because from her he is himself
63.
born."

CHAPTER V.

GUPTA PERIOD.

Kālidāsa throws a flood of light on the Prajāpatya form of marriage, which, it has been assumed, ^{was} in vogue in this period. In this form of marriage, the bridegroom approached the bride's father through an agent who arranged the marriage. If the parents of the bride agreed to the terms of the proposed marriage, an auspicious day was fixed for its celebration. ² The bride was gaily dressed and a woolen band was fastened round the ³ arm. The bridegroom who was also adorned and had marked his forehead, proceeded in procession to the bride's house. ⁴ The bridegroom's party was received at the city gate by the bride's people, ⁵ headed by her father. The bridegroom was given a seat with due ceremony and then gifts were offered to him. ⁶ After he had been taken into the bride's

1. Kumāra Sambhava, VI, p. 58. (trans. by Griffith)

2. Ibid., VII, p. 66.

3. Ibid., VII, p. 70.

4. Ibid., VII, p. 72 ff.

5. Ibid., VII, p. 74.

6. Ibid., VII, p. 77.

presence their hands were joined together by the priests as a symbol of their union. The newly married couple then went round the sacred fire, after which the officiating priest blessed them by saying

"This flame be witness of your wedded life,-

Be just, thou Husband, and be true, thou Wife".⁷

Finally the couple retired to the bridal chamber.

It is probable that this form of marriage was popular among the princely class, as is evident from the marriage of Rājyaśrī, the daughter of Prabhākara-
vardhana, to Grahavarman Maukhārī as recorded in Bāṇa's Harshacharita. It is clear from the conversation between Prabhākaravardhana and his queen concerning the marriage of Rājyaśrī that he was most anxious to give his daughter in marriage. It is written, "Our darling, Rājyaśrī, my queen, is now grown a young woman. The thought of her, like her noble qualities, never for a moment leaves my heart. As soon as ever girls near maturity, their fathers become fuel to the flame of pain a bridegroom may have other merits, the wise specially incline towards good family. Now at the head of all royal houses stand the Mukharas, worshipped, like Siva's foot-print, by all the world. Of that race's pride, Avantivarman, the eldest son,

7. Ibid., VII. p. 78.

Grahavarman by name, who lacks not his father's virtues, a prince like the lord of planets descended upon earth, seeks our daughter. Upon him, if your majesty's thoughts are likewise favourable, I propose to bestow her'; To these, her husband's words, the queen with tearful eyes and a heart alarmed by love for her daughter replied: 'Mothers, your majesty, are to their daughters no more indeed than nurses, useful only in rearing them. In their bestowal the father is the judge. Love for a daughter, however, far far exceeds love for a son, pity causing the difference. My lord only knows how all our lives long she is a care to us'⁸. The above passage from Bāṇa is highly significant, for it suggests a number of things worth noting in connection with the prevailing form of marriage at this period. It is clear from the Harsha-Charita that the question of good family and personal accomplishments played a great part in the selection of a son-in-law. It also appears that the father alone decided and arranged the daughter's marriage, though the mother, too, had to be consulted about it, as a matter of formality.

It is evident that the Āsura form of marriage actually prevailed during the Gupta period, at least,

8. Bāṇa, Harsha-Charita, p. 122-123.

among the kings. That such a marriage actually existed at this period can also be substantiated from the inscriptions. The Eran stone pillar inscription of Samudra Gupta describes how he "married a virtuous and faithful wife (Dattadevī) whose dower (dattasūlkā) was provided by (his) manliness and prowess"⁹. Again, this custom is probably mentioned in the Udayagiri cave inscription of Chandra Gupta II which states, "Bought by the purchase-money of (whose) prowess, (the earth), in which (all other) princes are humiliated by the slavery (imposed on them by him)"¹⁰ The Aphsad stone inscription of Ādityasena of the family of the Guptas, of Magadhā states that while Dāmodaragupta was king he "gave away in marriage a hundred daughters of virtuous Brāhmanas endowed with many ornaments and with youth, (and) dowered with agra¹¹hāra-grantā." From the above inscriptions, therefore, it is evident that the giving of a dowry and bride-price was practised and patronised by the Guptas and other contemporary rulers. It was a pious act for a king to provide dowries for girls.

Kālidāsa mentions another form of marriage, namely, Gāndharva. The chief characteristic of this type of

9. Fleet, Corpus Inscriptionum Indicarum, vol 3, (2), p.21. text p. 20.

10. Ibid, vol.3.(6), p.55. 11. Ibid., vol.3,(42), p.206, text p. 203.

marriage is that the couple are secretly united, entirely of their mutual love and affection, and without the consent or knowledge of the parents or relatives. The nature and character of this form of marriage is clear from the utterance of Dushyanta when he says, "Do not fear your family, beautiful Śakuntalā. Father Kanva knows the holy law. He will not regret it.

For many a hermit maiden who

By simple, voluntary rite

Dispensed with priest and witness, yet

Found favour in her father's sight"¹².

It has, however, been suggested by scholars that Gāndharva marriage of Śakuntalā is only a traditional reference to the practices of an earlier time, long obsolete in Kālidāsa's days. It has been said, "the Gāndharva form of marriage was regarded as quite respectable and a girl of a certain age was given the right to choose her own husband, if the parents had not married her within a proscribed age. We find in Kālidāsa that Dushyanta says that tradition goes that daughters of Kings had married according to the Gāndharva custom and that such marriages were approved by parents. This shows that in Kālidāsa's time at least the Gāndharva marriage was going out of fashion"¹³.

12. Śakuntalā, Act 3, p. 34 (Trans. by Ryder).

13. A History of Sanskrit Literature, Edited by S.N. Dasgupta, vol. I, p. 411.

A substantially similar view has also been expressed by Upadhyaya who says, "it is evident that it was at least not prevalent during the time of the poet, except, perhaps, in case of a few laxities which he seem to deprecate. The most explicit reference to the Gāndharva marriage is found in the union of Dushyanta and Śakuntalā described in the Abhijñana Śakuntalā. This is obviously a traditional reference to an archaic incident which has been supported by the poet only by quoting instances from times still more archaic To Kālidāsa it is not at all a homely incident, but one the sanction for which he is constrained to quote from instances, not contemporaneous, but only 'reported' as old and archaic even during the days of Dushyanta."

14

15

Certain inscriptions of this period refer to Svayamvarā. The Eran stone pillar inscription of Budha Gupta (the year 165) state, "On this (lunar day), (specified) as above by the year and month and day; - by the Mahārāja Mātrivishnu, who is excessively devoted to the divine One; who, by the will (of the god Vidhātri, was

14. Upadhyaya, India in Kālidāsa, p. 182.

15. C.I.I. vol. 3, see infra.

approached (in marriage-choice) by the goddess of sovereignty, as if by a maiden choosing (him) of her own accord (to be her husband)¹⁶.. Again, the Alina copper-plate inscription of Siladitya VII (the year 447) records how Dhruvasena III "accepted in marriage the goddess of royalty, just as if she were longing to choose (him) of her own accord, from the assemblage of kings, full of affection (for him)"¹⁷. It should, however, be borne in mind that all these inscriptions refer to goddesses, symbolising fortune and victory, choosing kings for their husbands. It seems that these allegorical references do not indicate that svayamara was practised socially. However, it cannot be denied that the custom of svayamvara was still fresh in the mind of the people. However, Bāna's Kādambarī relates how Chandrapīḍa offered himself in marriage to Chitraratha's daughter. He writes, "Now, Chandrapīḍa, having quickly performed all the courtesies of arrival, beheld the state of Chitraratha's daughter, and thought: 'Surely my heart is dull, in that it cannot even now believe. Be it so. I will, nevertheless, ask her with a skilfully-devised speech'. Then he said aloud: 'Princess, I know that this pain, with its unceasing torment, has come on thee from love. Yet, slender maiden, it torments thee not as us. I would gladly, by the offering of myself, restore

16. Ibid., vol. 3, (19), text p. 89.

17. Ibid., vol. 3, (39), p. 184. text p. 176-177.

thee to health. For I pity thee as thou tremblest; and as I see thee fallen under the pain of love, my heart, too, falls prostrate.¹⁸" But here, too, the allusion is only to a fictitious person, and as such it does not indicate the existence of any such state of things in actual society.

The religious necessity of marriage still seems to have been emphasised in this period as in earlier times. Upadhyaya says that marriage was meant for the accomplishment of an end which was the performance of the social and religious duty in company (sahadharma^{caranāya}); this phrase was an essential injunction of the priest to the couple, and in consequence of it the wife was termed a dharmapatni. A wife was considered the chief necessity for the performance of rites by the righteous who busied themselves in the observance of religious duties,¹⁹ "kriyānām khalu dharma^{yānām} satpatnyo mulakāraṇam."

It seems that post-puberty marriage was still the observed practice at this period. That the bride had attained puberty at the time of her marriage is indicated by the fact that she was required to assent to certain passages of the marriage ritual. It is written in the Kumāra Sambhava,

"Look gentle Umā', cried her lord, 'afar
Seest thou the brightness of yon polar star?'"

18. Kādambarī, p.169 (Trans.by C.M.Ridding).

19. U.I.K., pp.185-186.

Like that unchanging ray thy faith must shine!'

20.

Sobbing, she whispered, 'Yes, for ever thine!'

Moreover, it is made quite clear in the above work that the bride and bridegroom were adults and realised the nature of love. The passage runs:

"They met; and true love's momentary shame
O'er the blest bridegroom and his darling came;
Eye looked to eye - but quivering as they met,
Scarce dared to trust the rapturous gazing yet" 21

That Śakuntalā was clearly of age at the time of her marriage is sufficiently indicated by the dialogue of Dushyanta and Priyamvadā when the king asked, "My question is this:

Does she, till marriage only, keep her vow
As hermit-maid, that shames the ways of love?
Or must her soft eyes ever see, as now,
Soft eyes of friendly deer in peaceful grove?"

To this Priyamvadā replied, "Sir, we are under bonds to lead a life of virtue. But it is her father's wish to give her to a suitable lover" 22 Moreover, the courtship and ultimate marriage of Śakuntalā in the Gāndharva form leaves no doubt that she was an adult and had attained marriageable age.

As in earlier times, polygamy was confined to princes and rich people. Most of the heroes of Kālidāsa

20. KUM., VII, p.78.

21. Ibid., VII, p.77.

22. ŚAK., Act.1, p.14 (Trans.by Ryder).

have more than one wife. When Śakuntalā was about to leave the hermitage Kanva asked his disciple who was to accompany her to carry a message to the king: "Son Śaṅgarāva, when you present Śakuntalā to the king, give him this message from me.

Remembering my religious worth,
Your own high race, the love poured forth
By her, forgetful of her friends,
Pay her what honour custom lends
To all your wives. And what fate gives
Beyond, will please her relatives." 23.

This passage clearly shows that the king had more than one wife.

It seems that though the custom of offering gifts to the bridegroom was practised, it does not appear to have been essential to the marriage rite. It was merely customary to give presents to the bridegroom before the marriage, as is shown by the Kumāra Sambhava. It is written,

"Then led they Śiva to a royal seat,
Fair gifts they brought, for such a bridegroom meet:
With all due rites, the honey and the milk,
Rich gems were offered and two robes of silk." 24.

It seems, however, that such gifts were also given after the marriage ceremony was over. The amount of dowry obviously varied according to the means of the father or guardian of the bride. In any case, the bride was given away in marriage, decked with ornaments. She also received

23. Ibid., Act.IV, p.48.

24. KUM., VII, p.77.

25. Raghuvamśa, VII, 32 quoted in U.I.K., p.185.

26. KUM., VII, p.70.

personal presents from her relatives on the occasion of her marriage.

It seems clear that a daughter was considered as a valuable trust and as such was carefully guarded by the father. However, a daughter would, on her marriage, be translated to the authority of her husband. If a married woman stayed in her father's house, she was considered to have transgressed the social laws. This is evident from the utterance of Śarnagarva when he says,

"Because the world suspects a wife
who does not share her husband's lot,
Her kinsmen wish her to abide
With him, although he love her not"²⁷

According to Kālidāsa the husband had complete authority over his wife:

"Leave her or take her, as you will;
She is your wife;
Husbands have power for good or ill
O'er woman's life"²⁸ It is therefore

obvious that women were fast losing their traditional independence. It was no longer possible for them to have an independent life of their own, as in former times.

Concerning the custom of Satī, Saletore says, "This custom apparently came into vogue with the rise of the Guptas, and it appears to have been known to Vātsyāna^{YA}, Kālidāsa and Śūdraka. Probably one of the main causes

27. Śak., Act.V.p.56 (Trans.by Ryder).

28. Ibid., Act.V. p.60.

for the revival of this usage was its common prevalence among the Scythians, who ruled over a considerable portion of northern India from about 150 B.C. to A.D. 250²⁹. It is, however, noteworthy that Bāṇa opposed this custom, tooth and nail. He said that dying after one's beloved is fruitless; it is a custom followed by the foolish. It does not do any good whatever to the dead person. On the other hand, by surviving the deceased, one can do much good to both oneself and to the departed by offering the prescribed oblations for his happiness in the other world.³⁰ It seems that such vehement opposition to the custom of Satī had little effect, for the history of the period bears ample testimony to its growing popularity. The Eran posthumous stone pillar inscription of Goparāja (the year 191) states how Goparāja's wife committed Satī. The above inscription records that "(his)" devoted, attached, beloved and beautiful wife, in close companionship, accompanied (him) onto the funeral pyre³¹.

Bāṇa, however, describes the actual performance of Satī. From the picture of the rite afforded by him, it is evident that not only the chief wife, but also

29. Salatore, *Life in the Gupta Age*, p.214.

30. Kād, quoted in *L.G.A.*, p.214.

31. *C.I.I.*, vol. 3 (20), p.93.

other co-wives accompanied the husband onto the funeral pyre. On the death of Prabhākaravardhana, Harsha went to the women's quarters in haste and heard, while still at a distance, the cries of the queens who had resolved to die. Bāṇa's words are, "Rising, he went in haste to the women's apartments, where while ^{at} at a distance he heard cries³² from queens resolved to die". He also describes the touching scene when the women, who had resolved to die, took leave of one another.³³ He paints a similar farewell picture in connection with Harsha's sister, Rājyasrī who, on her husband's death, also resolved to die with all her women.³⁴ It seems, however, in spite of these instances of Satī, it was not a compulsory custom for all widows. This is evident from Bāṇa's account which makes it plain that while Yasovati committed sati, her daughter Rājyasrī was prevented from doing so, in spite of her determination. Bāṇa writes, "..... The princess wept violently for a long time with a loud outburst of grief, her throat choked by the tears which broke forth to show the pressure of the griefs which she had so long pondered over, and her soul filled with

32. B.H., p.149.

33. Ibid., pp.149-150.

34. Ibid., pp.247-248.

the weight of her distress; but when the first vehemence of her emotion was spent she allowed her brother to lead her away from the fire and sat down³⁵ at the foot of a tree nearby".

There can be, therefore, no doubt that widows did survive their dead husbands, and this fact is supported by the inscriptions. The Mandasor stone inscription of Kumāragupta and Bandhuvarman (the Malava years 493 and 529), referring to the victory of the latter says, "Even to-day, when the long-eyed lovely women of (his)enemies, pained with the fierce pangs of widowhood, think of him, they stagger about through fear, in such a way as to fatigue (their) firm and compact breasts"³⁶. Again, the Nagarjuni Hill cave inscription of Anantavarman, a Maukhari chieftain, records how his prowess in war taught "the wives of (his) enemies the condition of the sorrows (of widowhood)"³⁷. All the above inscriptions refer to the soldiers of the enemy country who fell in the war, but there is no mention either of the fact that Satī was compulsory, or that the rite was universally carried out. Kālidāsa

35. Ibid., pp. 249-250.

36. C.I.I., vol. 3, (18), p.86. Text p.82-83.

37. Ibid., vol.3, (49), p. 226, text p. 225.

touchingly describes the sorrows of widowhood.

The Kumāra-Sambhava describes a widow's lament

thus: "Sad, solitary, helpless, faint, forlorn,

Woke Kāma's darling from her swoon to mourn;

Too soon her gentle soul returned to know

The pangs of widowhood - that word of woe!

Scarce could she raise her, trembling, from the
ground,

Scarce dared to bend her anxious gaze around,

Unconscious yet those greedy eyes should never

Feed on his beauty more - gone, gone forever".³⁸

The above sources seem to suggest that the remarriage of widows was not in vogue. It is, of course, possible that the practice, though not popular or at all widely practised, prevailed in certain sections of society. There can be no doubt that this was an established custom among the princely class, for history records that the emperor Chandragupta II married his elder brother Rāmagupta's wife, Dhruvadevī.³⁹ Such marriages were, however, condemned by Bāṇa in later times.^{39a.}

Society was divided into the four traditional castes, namely, Brāhmanas, Kshatriyas, Vaiśyas and Sūdras. The existence of these castes was obviously known to Fa-Hien, the

38. Kum, IV, p. 33.

39. cf. L.G.A., p. 215.

39a. B.H., p. 194; Ep. Ind., XVI.11, No. 26, p. 248.

Chinese traveller. He says that the Brāhmanas, contrary to the doctrines they preached, had become angry and jealous.⁴⁰ He found the 'heads of Vaisya⁴¹ families' dispensing charity and medicines. He, also, noticed that the fishermen and hunters who constituted the Chandāla caste, kept apart from the other castes.⁴² Fa Hien, however, does not mention the Kshatriya caste, though it seems likely that when he refers to the King's bodyguards and attendants,⁴³ he is referring to the Kshatriyas. Yüan Chwang's observations regarding the four castes are more precise. He states, "There are four orders of hereditary clan distinctions. The first is that of the Brāhmanas of 'purely living'; these keep their principles and live continently, strictly observing ceremonial purity. The second order is that of the Kshatriyas, the race of kings; this order has held sovereignty for many generations, and its aims are benevolence and mercy. The third order is that of the Vaisyas or class of traders, who barter commodities and pursue gain far and near. The fourth class is that of the Sudras or agriculturists; these toil at cultivating the soil

40. Fa Hien, A Record of Buddhistic Kingdoms, p. 55.

41. Ibid., p. 79.

42. Ibid., p. 43.

43. Ibid. p. 43.

and are industrious at sowing and reaping. These four castes form classes of various degrees of ceremonial purity.⁴⁴ This 'ceremonial purity' observed by Yüan Chwang seems to be the vital element, the preservation of the Varnāśrama Dharma. It was preached by Kālidāsa and reflected in current ideas as to the duties of kingship. There are several inscriptions which expressly deal with the four castes and throw considerable light on the inter-relations of these castes and ^{the} rulers. The Mandasor stone inscription of Yasodharman and Vishnuvardhana (the Malava year 589) states the "advantages of those who belonged to the (four recognised) castes".⁴⁵ The Asirgadh copper seal inscription of Śārvavarman, a Maukhari king, states, "(There was) the illustrious Mahārāja Harivarman, whose fame stretched out beyond the four oceans; who had other kings brought into subjection by (his) prowess and by affection (for him); who was like (the god) Chakradhara, in employing (his) sovereignty for regulating the different castes and stages of religious life".⁴⁶ Similarly, the Sonpat copper

44. Yüan Chwang, On Yüan Chwang's Travels in India, 1, p. 168; Hiuen Tsiang, Buddhist Records of the Western World, 1, 82.

45. C.I.I., vol. 3, (35), p. 157, Text p. 154.

46. Ibid., vol. 3, (47), p. 221, Text p. 220.

seal inscription of Harshavardhana, King of Kanauj credits Prabhākara- Vardhana, the father of Harshavardhana with regulating all the castes and stages of religious life. It says, "the Paramabhṭṭāraka and Mahārājadhirāja, the glorious Prabhākaravardhana..... was employed in regulating all the castes and stages of religious life"⁴⁷....."

Again, the Alina copper-plate inscription of Silāditya VII (the year 447) describes how Kharagraha(II) regulated the practices of the different castes and the stages of life. It mentions, "the illustrious Kharagraha (II),..... who was one of the best of men of a kind that was unprecedented; who, as if he were the personification of religion, properly regulated the practices of the different castes and stages of life"⁴⁸.... From the above records it seems clear that it was considered the duty of the kings to protect the four castes and their regulations.

According to Kālidāsa, also, it was the duty of the king to preserve the Varnāśrama Dharma. The principle instilled is that each caste should perform its own duties. Kālidāsa's Śakuntalā has the following passage:

"Oh! rightly noble-souled
is the Lord of men, not swerved from rectitude;

47. Ibid., vol. 3 (52)p. 232.

48. Ibid., vol. 3 (39), p. 185, Text p.177.

Not one of all the grades,
even tho' the lowest seeks the path of wrong;
This palace all the same,-
with a mind accustomed into solitude
I think- is crowded so,
'tis but like a house which flames encircling
throng".⁴⁹

In case of any infringement of such duties, it is
clear that the king was expected to suppress the breach
of custom. It is written,

"Those set out on wicked courses,
with mace assumed, thou rulest;
Pacify thou dost all quarrel;
thou tendest for protection...."⁵⁰

It is, however, interesting to note that in
spite of the professed ideal of varṇāśrama dharma, and
the ostracism consequent upon any deviation from it,
intercaste marriage frequently took place. Referring
to inter-caste marriages Yüan Chwang says, "There
are also mixed castes; numerous clans formed by
groups of people according to their kinds, and these
cannot be described".⁵¹ That Yüan Chwang was correct
in this observation can be demonstrated from the
work of Bāṇa, the chronicler of Harshavardhana.

According to the Harshacharita, Bāṇa had two half-
⁵²
brothers. Chandrasena and Matrisesa, born of a Sūdra
49. Sak., Act. V.10, p. 99. (Trans. by Roby Datta).

50. Ibid., Act.V.8, p. 97 (Trans. by Roby Datta).

51. Y.C., I, p. 168; H.T., I, p. 82.

52. B.H., p. 32.

mother, who lived with Bana. It seems, however, clear that marriage within the caste was preferred. Yüan Chwang, indeed, suggests that intercaste marriages were not favoured. With regard to the actual practice of marriage he indicates that marriage between relatives on the mother's and father's sides was banned. Nor was remarriage of widows in vogue. He says, "The members of a caste marry within the caste, the great and the obscure keeping apart. Relations whether by the father's or the mother's side do not inter-marry, and a woman never contracts a second marriage".⁵³

53. Y.C., 1, p. 168; but see H.T., 1, p. 82.

CONCLUSION.

The origin of the institution of marriage has always been a debatable subject. Moreover, in spite of the antiquities of the Vedas, we are forced to supplant the limitations of our knowledge by anthropology. This being so, as a starting point the theory of primitive promiscuity has been examined critically; it has been upheld by many eminent anthropologists, who argue that at the dawn of human culture there was no institution of marriage at all and consequently men and women practised sexual promiscuity. In such a promiscuous stage of culture, it is obvious that there must be uncertainty of male paternity, and this uncertainty along with other factors, has, as has been suggested, brought about a further stage in the evolution of society which is characterised by anthropologists as mother-right which, if it means anything, means the supremacy of women in society. It is, however, interesting to note that there is another theory which runs parallel to that mentioned above. According to the latter, the primeval social condition of the human race was patriarchal according to which, society founded only agnatic relations. However, those scholars who uphold the alleged primitive stage of promiscuity and its resultant mother-right, admit the emergence of male supremacy as superseding the rule by women.

It has been suggested that the survival of certain customs point to a stage of social evolution when the institution of marriage was unknown. Such surviving customs are: Pre-nuptial sexual relations; taste for sexual variety; defloration of virgin brides by a nobleman, chief or king, religious prostitution; offering a wife to guests and so on. But it has been found that male idealistic notions about female chastity and the natural jealousy of men with regard to women, who, indulging in intimacy with other men, render the theory of promiscuity very unlikely.

It has been proved by linguistic scholars that the primitive Indo-European family organisation was patriarchal and that being so it is improbable that the Aryans or the Indo-Aryans practised promiscuity. However, there are traces of sexual laxity in early Indian literature; but the existence of sporadic sexual laxity is altogether a different thing from the existence of a stage of culture when the institution of marriage was unknown. It must be admitted that there is no concrete proof of the much talked of promiscuity still.

Again, our attention has been drawn to the fact that marriage was probably of royal origin, that is to say, it was the sole prerogative of kings and closely connected with the ceremonies of coronation; ^{and} as an extension of this

theory it has been held that the common people probably practised promiscuity. Indeed, the functions of kingship and the functions of the husband in a patriarchal society do closely resemble each other.

As has been said, however, it seems that the theory of promiscuity is improbable. There seem to be elements of consistency and regularity in the relations between the sexes from the very beginning, though it must be admitted that nothing can be definitely suggested concerning the nature and character of the most primitive form of marriage.

The Indian social stages of life, the *Āśramas*, are traditionally four, namely, *Brahmachārīn*, *Grihastha*, *Vānaprastha* and *Sannyāsīn*. Of these stages of life, *Grihastha* is the most important. It has been laid down that a householder, placed as he is, should be careful that his materialistic surroundings do not impede his spiritual duties. His position in society is a high one, for he is expected, on the one hand, to set up a family and beget children, and on the other, to endeavour to reach the spiritual goal of Indian religion by practising charity, sacrifice, and renunciation. Throughout ancient Indian literature great importance is attached to the *Āśramas*.

Aryan society, even in the ancient Indian period, was clearly patriarchal. A woman on her marriage left her

father's house and became a member of her husband's family, and, that being so, it is natural that she should be under the potestas of her husband, as the head of the family. However, in early times it is only theoretically that the women were subject to the authority of their men; in fact the proprietary rights of the father or husband were not exercised. Consequently, women enjoyed full social independence. The wives were essential participants in the household sacrifices, and were considered as spiritually the other half of the husband. The sacrificial rights of women were, however, curtailed by the Grihya Sūtras. It is evident that in the epic period women commanded respect, though their rights of participation in the sacrifices had disappeared. The identification of the wife with the home, which is stressed in the Vedic literature is carried on in the epics. The position of women was, also, substantially a high one in the Mauryan period, as is evident from the Arthasāstra, but it gradually declined, after the time of Manu, and finally Yajñavalkya made it the highest duty of a wife to render absolute obedience to the husband. The Yajñavalkya's ideas seem to have dominated in the Gupta period.

Veic marriage was solemnised by conforming to the rituals mentioned in the Rigveda; but other forms of marriage namely Rākshasa, Āsura and Daiva were also

practised. In the epics the traditional eight forms of marriage namely, Brāhma, Prajāpatya, Ārsha, Daiva, Gandharva, Āsura, Rākshasa, Paisācha are enumerated though Rākshasa and Svayamvara were regarded as the most worthy. The Jātakas mention only three types of marriage namely, Gandharva, Svayamvara and negotiated marriage. But the said eight forms of marriage are still set out in the laws of Kaṭilya, Manu and Yajñavalkya and Nārada. The contemporary literature and inscriptions of the Gupta period mention the Prajāpatya, Āsura, ^{Gandharva} and Svayamvarā forms of marriage. It is, however, noteworthy that of the eight forms of marriage only Brāhma and Āsura are now recognised. 1.

Though the religious necessity of marriage is not emphasised in the Rigveda, it was stressed in the later periods. Marriage in India has always been regarded as a sacrament and not a mere contract. But in the Arthasāstra the element of contract exists. Manu, Yajñavalkya and others, however, fall back on the sacramental view of marriage. This view of marriage is admitted even to the present day. It has recently been laid down in the case of Sundrabai V. Shivanarayana

1. Trevelyan, Hindu Law, p.58.

that marriage is a holy union for the performance
1(a)
of religious duties, and not a contract. Hence a
marriage celebrated in minority is valid. Under the
present law, Child Marriage Restraint Act, 1929
(XIX of 1929) solemnisation of marriage between a
male under eighteen and a female under fourteen has
been restrained, but it does not affect the validity
of the marriage.

In the Vedic period, marriage was post-puberty,
and was so throughout the period of the Grihya Sūtras.
But the early marriage of girls was advocated in the
Dharma-Sūtras. In the epics and Buddhist literature,
however, the brides were actually adult at the time
of their marriage. Also, in the laws of Kautilya,
Manu and others the marriage of girls at an early age
is regarded as advisable, though post-puberty
marriage seems to have been generally practised in the
Gupta period. Under the present law consummation is
not necessary to make a marriage complete. There are
only two ceremonies which are essential to the
validity of a marriage solemnised in the Brāhma or
Āsura form, namely, invocation before the sacred fire
and saptapadi, both of which are obviously of great
antiquity.

1(a) M.P.H.L., p.518.

Polygamy was only theoretically recognised in Ancient India, for among the common people it was never a widely practised custom. It was, therefore, mainly confined to the princely class. Nevertheless, ^{1(b)} polygamous unions were legally valid in ancient India. Indeed, there is no limit to the number of wives a Hindu can have under the present law, as is ^{2.} indicated in the case of Virasvami V. Appasvami. Polyandry, on the other hand, was repugnant to the mind of the Aryans. This custom was never recognised by early Indian literature, nor is it legal under the present law. The chief ground on which rights to polygamy was exercised was, and is ^{even} now, ~~practised~~ is the absence of male progeny.

It seems that the widows of the Vedic period did not immolate themselves on the funeral pyres of their husbands, but there are traces of this practice in Vedic literature. The epic literature, however, does afford instances of Sati, but most of these instances were confined to the families of kings and the war-like nobles. This custom seems to have been fallen into disfavour in the later periods. ~~There is no~~ mention of it in the Mahabharata and Ramayana. The practice of

1(b) Gour, The Hindu Code, p.253.

2. M.P.H.L. p.520.

Sati, however, was revived in the Gupta period and gained popularity until in the last century it was put a stop to by legislation. (Regulation XVII, 14th December, 1829), which "declared the practice of sati illegal and punishable by the criminal courts as culpable homicide in Bengal." In this connection Dunbar says, "But the old tradition cannot be said to have then died out altogether, for cases have since occurred from time to time. As recently as 1930 a widow in the Hazaribagh district made an attempt to commit ³sati." But there seems to be no justification, on the evidence of such rare instances to think that the practice of sati still generally persists.

Vedic literature fully countenanced the remarriage of widows, and this was also followed by the Dharma-Sūtra writers, but the preference was generally in favour of a brother-in-law. This practice was carried on in the epic period. The laws of Kautilya, also, indicate the same state of things. It is, however, doubtful whether remarriage is allowed according to the laws of Manu. Yajñavalkya, too, bans the remarriage of widows, though Narada specifically allows it. There are also indications of widow remarriage ^{among the princely class} in the Gupta period, but nothing can definitely be said

3. Dunbar, A History of India, p.472.

about its frequency^{in other classes.} As time went on the remarriage of widows came to be regarded as disreputable and illegal among the higher castes. Thus it became necessary to pass the Hindu Widows Remarriage Act, 1856. But the above Act specifically provides that on remarriage the rights of the widow in her husband's or his lineal successor's property, shall cease, even if there is any custom of remarriage ^{4.} ^{5.} in ^{6.} (Gouri v. Sita; Vithu v. Govinda; Santala v. Badaswari). Under the Act, a widow who remarries may, on the petition of a member of the family of her deceased husband, be deprived of the right of guardianship of her children by the first husband. The Calcutta High Court, has, however, ^{7.} held that the court has discretion in the matter.

Vedic Tradition seems to recognise the legality of Niyoga, but it was prohibited by Āpastamba and Baudhāyana. The popularity and frequency of this practice is amply borne out by plentiful instances in

4. 14 C.W.N. 346; 5 I.C. 710.

5. 22 B. 321 F.B.

6. 500.327; 27 C.W.N. 669.

7. Sarkar, A Treatise on Hindu Law, p.169-170.

the Mahābhārata. It was allowed by Kautilya, but Manu forbade it as a custom meant for cattle only. The idea behind the recourse to this practice is obviously the desire for providing a son to the deceased, mainly for offering the customary oblations to him. The institution of adoption, which is a legal fiction, was as yet generally unacceptable to Indian society. This custom, however, finds a place in the laws of Yajñavalkya. Owing to lack of material, it is difficult to construct the subsequent development of this practice, and it is lost sight of in the Gupta period. Nevertheless, it is possible that this custom survived in some sections of society.

7(a)

It seems that the Rīgveda does not allow divorce. This is evident from the nature of a vedic marriage as reflected in the mantras recited at its celebration. It is only natural when the marriage is regarded as sacrament. A marked departure from the traditional sacramental view of marriage is witnessed to by the laws enacted by Kautilya. It appears that he regarded marriage partly as a contract. But even then his enactment of elaborate divorce laws does not extend to all forms of marriage. Manu and Yajñavalkya revert

7(a) Mitter, The Position of women in Hindu Law, p.208.

to the sacramental view of marriage, which allows no scope for divorce. Manu, however, allowed conjugal separation in certain circumstances. This is obviously far short of divorce in the strict sense of the term, for ~~the wife~~, the status of a wife is not changed by abandonment. Nor does it seem that divorce was allowed in the Gupta period. The same tradition is carried on in the present conception of marriage. Marriage in Hindu law is still regarded as an indissoluble union of the husband and wife,
8.
(Munshi v. Bhagwani) extending to the life beyond.

In Vedic times the Aryan population was considered as one people and consequently there was no hindrance to marriage among themselves. In course of time, the cleavage between ^{the} Sudras and the other castes was marked and inter-caste marriage was prohibited, though there has actually been a considerable intermixture of Aryan and non-Aryan blood in India. It is clear in the epics that the differentiation of occupation found in the Rigveda has taken a further step towards caste-distinction, though inter-caste marriage relations are not yet entirely precluded. It is said that the Aryans were averse to any

8. 13 P.L.R. 1922; 64 I.C. 356; 1922 L.79.

marriage relation with the Sūdras, but it is probable that Aryans did marry Sūdras, — an act for which religious and legal disadvantages entailed when the concept of caste grew up. Kautilya makes no distinction between a Sūdra and a member of the higher castes so far as forms of marriage are concerned. On the contrary, he recognised the status of a son born of a Brāhmaṇa father and Sūdra mother, though the right of inheritance of such a son was inferior. But Manu carried the question of caste into every sphere of life, and especially in his discussion of marriage. Manu, however, only condemns a marriage between a Brāhmaṇa man and Sūdra woman; he does not actually create any more drastic changes. It was left to Yajñavalkya to complete the system of caste distinction by his explicit rules. The inscriptions, accounts of foreign travellers and the contemporary literature amply demonstrate that the caste-system was an established fact in the Gupta period. It continues to the present day, and is generally regarded as an insurmountable barrier to marriage between members of different castes. The Act XXX of 1923 has, however, facilitated marriages between different castes, and in practice the caste system is weakening.

In Vedic times, the husband and wife were the

joint owners of the household. According to the Dharma-Sūtra writers a wife could also incur expenses in the absence of the husband. It has been suggested that the parents often returned the bride-price to the daughter to be enjoyed by her as her separate property during her life, after which it passed to her children. In the case of the daughter dying childless, the father could claim back the property from the son-in-law. The wedding presents received by the bride belonged absolutely to her. It is, however, doubtful if she could alienate this property without the concurrence of the husband. The scope of the strīdhana was gradually extended to include even the presents given by the husband subsequent to the marriage. The Dharma-Sūtra writers denied to the wives the rights of inheritance, but clearly admitted their rights to strīdhana. Vedic literature specifically proves that women were incapable of inheriting any property. According to the Arthasāstra a bride could herself receive sulka in the absence of her parents. It is specifically provided that means of subsistence or jewellery constituted the property of a woman. It is, however, apparent from the laws of Kaṭilya that the rights of a wife over her 'strīdhana' property were limited. A wife could, in the absence of her husband and when no proper provision had been made by him for her maintenance, use such property for her own maintenance and for the maintenance

of the household. On the contrary, a husband could use the wife's property in certain circumstances, seemingly without her consent. Kautilya has, however, accorded to daughters the rights of inheritance. But the law changed in the subsequent period. Manu does not mention the name of either a widow or a daughter in the list of heirs enumerated by him, though widows and daughters head the list of heirs given by Yajñavalkya. It is interesting to note that "in determining what is strīdhana according to a particular school, the modern courts have to look to what the commentators, who are authorities in that particular school, have said on the subject (Salem v. Lutchmana)⁹". Among the commentaries, the Mitakshara occupies the foremost position. The following is the definition of strīdhana as given by Vijñaneswara in the Mitakshara: "That which was given by the father, by the mother, by the husband, or by a brother; and that which was presented by the maternal uncles and the rest at the time of wedding before the nuptial fire; and a gift on a second marriage or gratuity on account of supersession; and, as indicated by the word adya (and the rest), property obtained by - (1) inheritance; (2) purchase; (3) partition; (4) seizure, e.g. adverse

9. M.P.H.L. p.112.

possession (Subramanian v. Arunachalam); (5) finding;
all this is strīdhana according to Manu and the rest".^{10.}
It is, however, needless to mention that the first part
of the above definition is a reproduction of the
definition of strīdhana as given by Yajñavalkya.
Vijñaneswara has, of course, expanded the concluding
part of the definition by including the five kinds of
property hitherto unrecognised by the great lawgivers,
on the basis of the word adya which occurs in the def-
inition given by Yajñavalkya. Before the Hindu Law
Inheritance (Amendment) Act, 1929, the only females
recognised as heirs in the Benares and Mithila schools
were the widow, the daughter, the mother, the father's
mother, the father's father's mother. Other females
were excluded on account of Baudhāyana's opinion against
the inheritance of women in general. The Madras or
Bombay schools do not follow the above text. They
interpret the word saprinda, which occurs in the text
of Manu, as including females. Under the above Act of
1929, the son's daughter, the daughter's daughter, and
the sister are recognised as heirs in all the parts of
India where the Mitakshara law prevails.

It is, therefore, obvious that most of the social
principles and laws laid down in ancient days have been

10. Ibid., p.113.

carried on to the present day with only slight modifications, so that their usefulness has not been impaired. In fact, they formed the basis of the consequent development of society with its manifold new necessities. The demands of the future will, without doubt, cause radical alterations in the whole system. India is united to-day as it has never been before. It must be realised that the acceptance of the caste system by orthodox Hinduism has created special problems which are not universal in the sub-continent. Gradually the hill and forest tribes are being absorbed into the Indian social structure. Brāhmanic influence and their own efforts to imitate the practices of the towns and villages of Hindu India have led some of them to accept Brāhmanical practices, a retrograde process which has produced nothing but evil. Legislation has let fresh air into many of the outmoded practices of Indian social life. India's new entity must, however, create changes in opinion and this will certainly effect further legislation. Sentiment may strive to preserve the traditions of the old law-books, but modern conditions demand modern laws.

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